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June 27, 2007

# Inspector General

## United States

## Department *of* Defense



Procurement Policy for Armored Vehicles

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## **Acronyms**

AHI	Armor Holdings, Inc.
CAR	Corrective Action Request
CECOM	Communications and Electronics Command
DCMA	Defense Contract Management Agency
FAR	Federal Acquisition Regulation
FPI	Force Protection, Inc.
GSA	General Services Administration
HArD	HMMWV Armor Demountable
HEMTT	Heavy Expanded Mobility Tactical Truck
HET	Heavy Equipment Transporter
HMMWV	High Mobility Multipurpose Wheeled Vehicle
IG	Inspector General
JERRV	Joint Explosive Ordnance Disposal Rapid Response Vehicle
JRAC	Joint Rapid Acquisition Cell
MCSC	Marine Corps Systems Command
MRAP	Mine Resistant Ambush Protected
OHEAC	O'Gara Hess and Eisenhardt Armoring Company
PLS	Palletized Load System
TACOM LCMC	TACOM Life Cycle Management Command



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

June 27, 2007

MEMORANDUM FOR NAVAL INSPECTOR GENERAL  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on Procurement Policy for Armored Vehicles  
(Report No. D-2007-107)

We are providing this report for your information and use. The Acting Chief of Staff, TACOM Life Cycle Management Command and the Commandant of the Marine Corps provided comments. We considered management comments on the draft of this report when preparing the final report.

Comments on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the staff. Questions should be directed to Ms. Deborah L. Carros at (703) 604-9217 (DSN 664-9217) or Ms. Beth K. Schaefer at (703) 604-9232 (DSN 664-9232). See Appendix C for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:



Richard B. Jolliffe  
Assistant Inspector General  
Acquisition and Contract Management

# Department of Defense Office of Inspector General

**Report No. D-2007-107**

(Project No. D2006-D000CK-0210.000)

**June 27, 2007**

## Procurement Policy for Armored Vehicles

### Executive Summary

**Who Should Read This Report and Why?** Army and the Marine Corps acquisition and contracting personnel should read this report because it concerns armored vehicle procurement decisions that affect Global War on Terrorism mission requirements.

**Background.** Congresswoman Louise M. Slaughter requested that the DoD Office of Inspector General review the DoD procurement history for body armor and armored vehicles and determine whether officials properly followed contracting policies. Congresswoman Slaughter also requested specific information on why DoD issued contracts to Force Protection, Inc., and Armor Holdings, Inc., for armored vehicles. This report addresses armored vehicles. The DoD Office of Inspector General is conducting a separate audit on body armor.

Armored vehicles provide various levels of protection and are built with integrated protection or are outfitted with armor kits. This report addresses the following armored vehicles: the Buffalo Mine Protected Clearance Vehicle, the Cougar, the Joint Explosive Ordnance Disposal Rapid Response Vehicle, and the High Mobility Multipurpose Wheeled Vehicle.

**Procurement History for Armored Vehicles.** DoD awarded 15 contracts, valued at \$2.2 billion, to Force Protection, Inc., and Armor Holdings, Inc., for armored vehicles and armor kits. Specifically, DoD awarded 11 sole-source contracts, valued at \$416.7 million, to Force Protection, Inc., for armored vehicles and 4 sole-source contracts, valued at \$1.8 billion, to Armor Holdings, Inc., for armored vehicles and armor kits. In addition, DoD placed two orders, valued at \$5.6 million, on a General Services Administration Federal supply schedule contract with Armor Holdings, Inc., for armor kits. DoD contracting and program officials stated that Force Protection, Inc., and Armor Holdings, Inc., were the only sources capable of producing the armored vehicles and meeting the urgent delivery schedules required to support the Global War on Terrorism.

**Results.** The Marine Corps Systems Command awarded sole-source contracts to Force Protection, Inc., for the Joint Explosive Ordnance Disposal Rapid Response Vehicle even though Marine Corps Systems Command officials knew other sources were available for competition. In addition, TACOM Life Cycle Management Command and Marine Corps Systems Command officials did not adequately justify the commercial nature of three commercial contracts with Force Protection, Inc., for the Cougar and the Buffalo Mine Protected Clearance Vehicle. As a result, the Marine Corps Systems Command continued to award contracts for armored vehicles to Force Protection, Inc., even though Force Protection, Inc., did not perform as a responsible contractor and repeatedly failed to meet contractual delivery schedules for getting vehicles to the theater. In addition, TACOM Life Cycle Management Command and Marine Corps Systems Command decisions to award commercial contracts to Force Protection, Inc., may have limited the

Government's ability to ensure it paid fair and reasonable prices for the contracts. The Marine Corps Systems Command should continue to calculate and assess any additional liquidated damages for late delivery of vehicles on contract M67854-05-D-5091 and compete future contracts for the Joint Explosive Ordnance Disposal Rapid Response Vehicle. Additionally, TACOM Life Cycle Management Command contracting officials should procure future Buffalo Mine Protected Clearance Vehicles and Marine Corps Systems Command contracting officials should procure future Mine Resistant Ambush Protected vehicles under FAR Part 15 with negotiated prices based on certified cost and pricing data, and include and enforce a liquidated damages clause on future contracts with Force Protection, Inc. (finding A).

The TACOM Life Cycle Management Command awarded a contract for crew protection kits to Simula Aerospace and Defense Group, Inc., an Armor Holdings, Inc., subsidiary. The subsidiary did not meet the Federal Acquisition Regulation definition of a responsible prospective contractor. Specifically, Simula Aerospace and Defense Group, Inc., did not have the necessary production control procedures, property control systems, and quality assurance measures in place to meet contract requirements for crew protection kits. As a result, the TACOM Life Cycle Management Command received crew protection kits with missing and unusable components, which increased the kit installation time and required additional reinspection of kits. In addition, the TACOM Life Cycle Management Command did not receive all of the crew protection kits in accordance with the contractual delivery schedule. Furthermore, the increased crew protection kit installation time, the additional reinspection of kits in theater, and the late deliveries all resulted in increased risk to the lives of soldiers. As of February 22, 2007, Simula delivered all items ordered on this contract; the contract remained open, however, pending several post-award audits the Defense Contract Audit Agency was conducting. The TACOM Life Cycle Management Command contracting officials should properly implement Federal Acquisition Regulation requirements to ensure that they award future contracts to responsible contractors and properly document determinations of contractor responsibility. In addition, the TACOM Life Cycle Management Command contracting officer should negotiate for consideration from Simula for late deliveries of crew protection kits and missing and nonconforming components (finding B).

TACOM Life Cycle Management Command and Marine Corps Systems Command internal controls were not adequate. We identified material internal controls weaknesses in the award of contracts to Force Protection, Inc., and Armor Holdings, Inc., for armored vehicles and armor kits. As a separate point, the Cougar and Joint Explosive Ordnance Disposal Rapid Response Vehicles have significant and operational value to our warfighters in the field. Information from users on vehicle performance indicated that vehicles performed well and saved lives.

**Management Comments and Audit Response.** The Acting Chief of Staff, TACOM Life Cycle Management Command, and the Commandant of the Marine Corps commented on finding A and concurred with the recommendations. The comments were responsive and no additional comments are required. A discussion of the management comments is in the Finding section of the report, and the complete text of the comments is in the Management Comments section.

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## Background

This report addresses inquiries made by Congresswoman Louise M. Slaughter, 28th district, New York (Appendix B). Congresswoman Slaughter requested the DoD Office of Inspector General (IG) review the DoD procurement history for body armor and armored vehicles and determine whether officials properly followed contracting policies. Congresswoman Slaughter also requested specific information on why DoD issued contracts to Force Protection, Inc., (FPI) and Armor Holdings, Inc., (AHI) for armored vehicles. This report addresses armored vehicles. The DoD Office of Inspector General is conducting a separate audit on body armor.

**What Are Armored Vehicles?** Armored vehicles provide various levels of protection. The first and optimal level of protection, Level I, refers to new vehicles with factory integrated armor and ballistic windows. Armored vehicles with Level II protection are outfitted with armor kits consisting of Army-tested armor plates and ballistic glass. Armored vehicles with Level III protection have pieces of steel and hardware applied to unarmored vehicles already in the field of operations.

FPI produces the Buffalo Mine Protected Clearance Vehicle (the Buffalo), Cougar, and Joint Explosive Ordnance Disposal Rapid Response Vehicle (JERRV), which are Level I protected armored vehicles. AHI produces the armored High Mobility Multipurpose Wheeled Vehicle (HMMWV), which has Level I protection.<sup>1</sup> AHI also produces Level II armor kits for retrofitting older HMMWVs. In addition, AHI produced Level II armor kits for the following heavy tactical vehicles: Heavy Expanded Mobility Tactical Truck (HEMTT), Palletized Load System (PLS), Heavy Equipment Transporter (HET), and M915 truck series.

This report discusses the Buffalo, Cougar, JERRV, and HMMWV. The Buffalo is a mine-protected clearance vehicle, and the Cougar and the JERRV are hardened engineered vehicles. The HMMWV is a light tactical vehicle.

**Program Management and Contracting Responsibilities.** The Program Manager Motor Transport,<sup>2</sup> Marine Corps Systems Command (MCSC), managed the Marine Corps HMMWV, Buffalo, Cougar, and JERRV programs. The Office of the Assistant Commander for Contracts, MCSC, was the contracting activity for the FPI and AHI contracts with the Marine Corps. In addition, MCSC managed the procurement of the JERRV for all Services.

The Project Manager Force Projection, under the Program Executive Office, Combat Support and Combat Service Support, managed the Buffalo program for

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<sup>1</sup>O’Gara Hess and Eisenhardt Armoring Company (OHEAC) and Simula Aerospace and Defense Group, Inc., (Simula) are subsidiaries of AHI. OHEAC produces HMMWV armor and HMMWV armor kits. Simula produces crew protection kits for heavy tactical vehicles.

<sup>2</sup>In 2005, the Marine Corps Systems Command transferred management of the Buffalo, Cougar, and JERRV programs from the Program Manager Engineer Systems to the Program Manager Motor Transport.

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the Army.<sup>3</sup> The Project Manager Tactical Vehicles, under the Program Executive Office, Combat Support and Combat Service Support, managed the HMMWV and heavy tactical vehicle programs for the Army. The Acquisition Center, TACOM Life Cycle Management Command (TACOM LCMC), was the contracting activity for the FPI and AHI contracts with the Army. Additionally, TACOM LCMC managed the procurement of the armored HMMWV for all military services. The 20th Contracting Squadron at Shaw Air Force Base was the contracting activity for the AHI contract with the Air Force.

**DoD Contracts With FPI.** DoD awarded 11 contracts to FPI for the Buffalo, Cougar, and JERRV. The Communications and Electronics Command (CECOM) awarded five contracts and TACOM LCMC awarded one contract to FPI for the Buffalo. MCSC awarded five contracts to FPI for the Buffalo, Cougar, and JERRV. The Defense Contract Management Agency (DCMA)-Atlanta, South Carolina Operations Team, administered all the armored vehicle contracts with FPI.

**DoD Contracts With AHI.** DoD awarded four contracts and placed two orders against a General Services Administration (GSA) Federal supply schedule contract for HMMWVs and armor kits. TACOM LCMC awarded three contracts to AHI for the armored HMMWV, various armor kits for the HMMWV, HMMWV Armor Demountable (HArD) kits, and crew protection kits. MCSC awarded one contract to AHI for HArD kits and placed one order for HArD kits through a GSA Federal supply schedule. The Air Force placed one order for HArD kits to AHI through a GSA Federal supply schedule. DCMA-Dayton, Cincinnati Operations Team, administered the contracts for armored HMMWVs, HMMWV armor kits, and HArD kits, and orders for HArD kits on a GSA Federal supply schedule contract. DCMA-Phoenix administered the crew protection kit contract.

## Objectives

Our overall audit objective was to review DoD procurement policies for armored vehicles. Specifically, we reviewed the procurement history for armored vehicle contracts to FPI and AHI in support of the Global War on Terrorism. See Appendix A for a discussion of the scope and methodology and prior coverage related to the audit objective.

## Review of Internal Controls

We identified material internal control weaknesses in the award of five contracts to FPI and AHI for armored vehicles and armor kits. Specifically, MCSC awarded sole-source contracts to FPI for the JERRV even though MCSC officials

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<sup>3</sup>In 2006, management of mine protected clearance vehicles transitioned from the Project Manager Close Combat Systems at Communications and Electronics Command to the Project Manager Force Projection at TACOM Life Cycle Management Command.

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knew other sources were available for competition. TACOM LCMC and MCSC contracting officials did not follow the Federal Acquisition Regulation (FAR) when issuing commercial contracts to FPI for the Buffalo and the Cougar. In addition, TACOM LCMC officials did not follow the FAR in determining contractor responsibility when awarding a contract to AHI for crew protection kits. We discuss these issues in detail in findings A and B. Implementing Recommendations A.1.b., A.1.d., A.2.b., and B.1. should correct these control weaknesses. We will send a copy of the report to the senior official in charge of internal controls for the Army and the Navy.

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## Procurement History for Armored Vehicles

DoD awarded 15 contracts, valued at \$2.2 billion, to FPI and AHI since FY 2000 for armored vehicles and armor kits. Specifically, DoD awarded

- 11 sole-source contracts, valued at \$416.7 million, to FPI for armored vehicles; and
- 4 sole-source contracts, valued at \$1.8 billion, to AHI for armored vehicles and armor kits.

In addition, DoD placed two orders, valued at \$5.6 million, on a GSA Federal supply schedule contract with AHI for armor kits.

DoD contracting and program officials stated that FPI and AHI were the only sources capable of producing the armored vehicles and meeting the urgent delivery schedules required to support the Global War on Terrorism.

## Force Protection, Inc.

DoD awarded 11 sole-source contracts, valued at approximately \$416.7 million, to FPI for armored vehicles. FPI<sup>4</sup> manufactured the Buffalo, Cougar, JERRV, Iraqi Light Assault Vehicle,<sup>5</sup> and Mastiff Protected Patrol Vehicle. The Iraqi Light Assault Vehicle and Mastiff Protected Patrol Vehicle are manufactured for Foreign Military Sales contracts and not covered under this audit.

**The Buffalo.** CECOM awarded five sole-source contracts and TACOM LCMC awarded one sole-source contract, together valued at \$73.5 million, to FPI for the Buffalo. MCSC awarded a sole-source contract, valued at \$4.6 million, to FPI for the Buffalo. MCSC awarded a second sole-source contract, valued at \$180.1 million, to FPI for Buffalos and JERRVs; the Buffalo portion of the contract was valued at \$40.2 million.

The Buffalo is a mine-protected clearance vehicle that protects crew and passengers against anti-tank landmine detonations and ballistic threats (see Figure 1). The Buffalo has an armored v-shaped hull that deflects outward the blast from an improvised explosive device, increasing the chance of survival for those inside the vehicle. In addition, the Buffalo can detect and remove live ordnance by using a 30-foot robotic arm and iron claw mounted with a camera and sensory equipment. The Buffalo helps crew members examine potential threats from within the safety of the vehicle's armored hull. See Table 1 for details on FPI contracts awarded for the Buffalo. See finding A for discussion on

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<sup>4</sup>In 2002, Sonic Jet Performance, Inc., acquired Technical Solutions Group, Inc., which produced the Buffalo and Cougar. In 2003, Sonic Jet Performance, Inc., changed its name to FPI. FPI reincorporated on January 1, 2005, and changed the name of its wholly owned subsidiary Technical Solutions Group, Inc., to Force Protection Industries, Inc.

<sup>5</sup>FPI was a subcontractor to BAE Systems for the Iraqi Light Assault Vehicle.

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TACOM LCMC and MCSC contracting practices followed for procuring the Buffalo.



**Figure 1. Buffalo**

**Table 1. FPI Contracts Awarded for the Buffalo**

<u>Contract</u>	<u>Procuring Service</u>	<u>Quantity Ordered</u>	<u>Contract Price (millions)</u>
DAAB15-00-C-1006	Army	1	\$ 1.1
DAAB15-02-C-0002	Army	1	0.5
DAAB15-02-C-0036	Army	10	7.7
W909MY-04-C-0034	Army	21	16.0
W909MY-05-C-0001	Army	15	10.1
M67854-05-C-5178	Marine Corps	4	4.6
W56HZV-06-C-0245	Army	41	38.1
M67854-07-D-5006*	Marine Corps	44	40.2
<b>Total</b>		<b>137</b>	<b>\$118.3</b>

\*This contract procured both Buffalos and JERRVs (see Table 2) and was for up to 80 Buffalos.

**Army Contracts.** CECOM awarded five sole-source contracts and TACOM LCMC awarded one sole-source contract, together valued at \$73.5 million, to FPI for the Buffalo. In February 2000, as part of an effort to identify a mine-protected clearance vehicle, CECOM awarded a sole-source contract to FPI for one Buffalo under a Foreign Comparative Test Program.<sup>6</sup> In November 2001, CECOM awarded a second sole-source contract to FPI for

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<sup>6</sup>The Foreign Comparative Test Program's principal objective was to support the warfighter by using nondevelopmental items of allied and friendly nations to satisfy U.S. defense requirements more quickly and economically.

another Buffalo for research and development. CECOM officials determined that the Buffalo met the mine-protected clearance vehicle requirement and awarded a third sole-source contract in September 2002 for 10 Buffalos for contingency needs. The Army subsequently used the 10 Buffalos to support the Global War on Terrorism. As the threat of improvised explosive devices increased, CECOM awarded two additional sole-source contracts and TACOM LCMC awarded one additional sole-source contract to FPI for the Buffalo on the basis that FPI was the only source capable of producing the Buffalo and meeting the urgent delivery schedules required to support the Global War on Terrorism. We found no indication that other sources were available for competition for the Buffalo.

**Marine Corps Contracts.** In September 2005, MCSC awarded the first sole-source contract, valued at \$4.6 million, for four Buffalos on the basis that FPI was the only source capable of producing the Buffalo and meeting the urgent delivery schedule required to support the Global War on Terrorism. In November 2006, MCSC awarded another sole-source contract, valued at \$180.1 million, for up to 80 Buffalos as part of the Mine-Resistant Ambush Protected (MRAP) program.<sup>7</sup> MCSC also procured 200 JERRVs under this contract. As of December 5, 2006, MCSC had ordered 44 Buffalos, valued at \$40.2 million, under this contract.

**Cougar and JERRV.** MCSC awarded one sole-source contract, valued at \$11.3 million, to FPI for the Cougar and three sole-source contracts, valued at \$287.1 million, for the JERRV. See Table 2 for details on the contracts. MCSC awarded all contracts for the Cougar and the JERRV on the basis that FPI was the only source capable of producing the vehicles within the urgent delivery schedule required in support of the Global War on Terrorism. However, MCSC officials knew other sources were available. See finding A for discussion of MCSC contracting practices followed for procuring the Cougar and JERRV.

**Table 2. FPI Contracts Awarded for the Cougar and JERRV**

<u>Contract</u>	<u>Procuring Service</u>	<u>Product Type</u>	<u>Quantity Ordered</u>	<u>Contract Price (millions)</u>
M67854-04-D-5099	Marine Corps	Cougar	28	\$ 11.3
M67854-05-D-5091	Marine Corps	JERRV	122	94.6
M67854-06-D-5042	Marine Corps	JERRV	79	52.6
M67854-07-D-5006*	Marine Corps	JERRV	200	139.9
<b>Total</b>			<b>429</b>	<b>\$298.4</b>

\*This contract procured Buffalos (see Table 1) and JERRVs.

<sup>7</sup>The MRAP program consists of acquisition categories I, II, and III vehicles. Acquisition category I vehicles are mine-resistant utility vehicles used for urban combat operations. Acquisition category II vehicles are multimission vehicles used for convoy escort and troop transport, such as the JERRV. Acquisition category III vehicles are larger vehicles used for mine and improvised explosives clearance operations, such as the Buffalo.

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**Cougar.** In April 2004, MCSC awarded a sole-source contract to FPI for 28 Cougars. The Cougar is a hardened engineering vehicle that provides protection against armor-piercing rounds and high-explosive projectiles. The Cougar is available in two configurations: a 4x4 design (see Figure 2) and 6x6 design (see Figure 3). Both designs are used for ordnance disposal, communications, command and control, and leading convoy missions. Similar to the Buffalo, the Cougar has an armored v-shaped hull that deflects outward the blast from an improvised explosive device, increasing the chance of survival for those inside the vehicle.



**Figure 2. Cougar 4x4**



**Figure 3. Cougar 6x6**

**JERRV.** MCSC awarded three sole-source contracts to FPI for the JERRV. In May 2005, MCSC became the procuring service for the Cougar for all military services, and the Cougar became a joint service vehicle known as the JERRV. In May 2005, MCSC awarded a sole-source contract to FPI for 122 JERRVs. In May 2006, MCSC awarded a second sole-source contract to FPI for 79 JERRVs. In mid-November 2006, MCSC awarded a third sole-source contract to FPI for 200 JERRVs as part of the MRAP program. MCSC also procured 80 Buffalos under this contract. During our visit in late November 2006, a program official stated that MCSC planned to compete future contracts for the JERRV.

## Armor Holdings, Inc.

TACOM LCMC awarded three sole-source contracts, valued at approximately \$1.8 billion, and MCSC awarded one sole-source contract, valued at \$3.6 million, to two AHI subsidiaries for armored vehicles and armor kits. The four contracts were awarded to OHEAC, which AHI acquired in August 2001, and Simula, which AHI acquired in December 2003. In addition, the Marine Corps and the Air Force placed two orders for armor kits, valued at approximately \$5.6 million, from OHEAC through the GSA Federal supply schedule.<sup>8</sup>

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<sup>8</sup>Orders placed against GSA Federal supply schedules are considered to be issued using full and open competition. The ordering activity has concluded that the order represents the best value and results in the lowest overall cost alternative to meet the Government's needs.

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AHI manufactures the armored HMMWV and armor kits for retrofitting HMMWVs and heavy tactical vehicles.<sup>9</sup> See Table 3 for details on AHI contracts awarded for armored vehicles and armor kits.

**Armored HMMWVs.** The armored HMMWV was designed to conduct reconnaissance and security operations and provide ballistic, artillery, and mine blast protection to vehicle occupants (Figure 4). TACOM LCMC managed the procurement of the armored HMMWV for the Services and contracted with AM General and OHEAC to manufacture armored HMMWVs. AM General manufactured and provided the enhanced capacity HMMWV chassis to OHEAC, and OHEAC provided and installed the armor on the HMMWV.

In April 2000, TACOM LCMC awarded a sole-source contract, valued at \$24.5 million, to OHEAC for 360 armored HMMWVs. TACOM LCMC awarded the contract as a commercial contract. Subsequent modifications to the contract for additional armored HMMWVs and various armor kits increased the contract award amount, as of December 5, 2006, to approximately \$1.5 billion for a total of 18,105 armored HMMWVs and 102,698 armor kits to supplement and retrofit HMMWVs.

According to the acquisition plan for the armored HMMWV, TACOM LCMC contracted with OHEAC for the armored HMMWV because OHEAC was the only responsible contractor capable of meeting the TACOM LCMC requirement for armoring the HMMWV. The acquisition plan specifically stated that OHEAC was the only known source with the knowledge and expertise of HMMWVs and armor integration required to manufacture and deliver HMMWVs in accordance with Army performance specifications and within the Army's critical delivery milestones. DCMA personnel stated that OHEAC had consistently met its delivery schedules for the armored HMMWVs and armor kits.

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<sup>9</sup>Another subsidiary of AHI, Stewart and Stevenson, Inc., (acquired in May 2006), manufactures armored medium tactical vehicles for DoD. We did not review Stewart and Stevenson, Inc., contracts during this audit because the DoD IG initiated a separate audit addressing Stewart and Stevenson, Inc., contracts for medium tactical vehicles.

**Table 3. AHI Contracts Awarded for Armored Vehicles and Armor Kits**

<u>Contract</u>	<u>Procuring Service</u>	<u>Product Type</u>	<u>Quantity Ordered</u>	<u>Contract Price (millions)</u>
OHEAC				
DAAE07-00-C-S019	Army	Armored HMMWVs*	18,105	\$1,481.9
M67854-04-D-5025	Marine Corps	HArD kits	110	3.6
W56HZV-04-C-0243	Army	HArD kits	1,527	23.8
GS-07F-0177J (Order No. 0127)	Air Force	HArD kits	98	3.9
GS-07F-0177J (Order No. 5149)	Marine Corps	HArD kits	48	1.7
Simula				
W56HZV-04-C-0259	Army	Crew Protection Kits	5,900	<u>265.9</u>
<b>Total</b>				<b>\$1,780.8</b>

\*This contract also procured 102,698 armor kits; the value of the kits is included in the contract price column above. The Army may increase the quantity ordered on this contract through option year 2007 and, if exercised, 2008.



**Figure 4. Armored HMMWV**

On September 29, 2006, DoD IG issued a report<sup>10</sup> on commercial contracting that addressed the Army's armored HMMWV contract with OHEAC. The report concluded that the Army did not provide adequate documentation to justify the

<sup>10</sup>DoD IG Report No. D-2006-115, "Commercial Contracting for the Acquisition of Defense Systems," September 29, 2006.

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commercial nature of the contract. In addition, the DoD IG concluded that the contracting official was limited in ensuring a fair and reasonable price because the Army could not require certified cost and pricing data. FAR 15.403, “Obtaining Cost or Pricing Data,” does not require the contractor to provide certified cost and pricing data for commercial purchases.

**HArD Kits.** DoD awarded two sole-source contracts and placed two orders on a GSA Federal supply schedule contract, valued at \$33 million, to OHEAC for HArD kits. Military personnel installed HArD kits on unarmored HMMWVs already located in theater. HArD kits consisted of left, right, and rear armor panels, as well as transparent armor for the windshield and side windows. HArD kits provide protection from small-arms fire and shrapnel, overhead protection, and floor protection from exploding grenades or airburst ammunition.

In December 2003, MCSC awarded a sole-source contract, valued at \$3.6 million, to OHEAC for 110 HArD kits. In January 2004, TACOM LCMC awarded a sole-source contract, valued at \$23.8 million, to OHEAC for 1,527 HArD kits.<sup>11</sup> TACOM LCMC and MCSC awarded both contracts to OHEAC for HArD kits as commercial purchases. In addition, TACOM LCMC and MCSC awarded the contracts on the basis that OHEAC was the only source capable of producing and installing the kits. According to the TACOM LCMC contracting officer, OHEAC subcontracted the Army contract for production of the kits to Simula. The TACOM LCMC contracting officer stated that Simula failed to meet the contract delivery schedule requirements because of quality problems Simula experienced with their first and second tier suppliers. The TACOM LCMC contracting officer subsequently changed the delivery schedule for all kits. The TACOM LCMC contracting officer stated that because of an ongoing investigation of a Simula subcontractor, TACOM LCMC did not negotiate a reduction in contract price as consideration for the revised delivery schedule.

In July 2004, MCSC procured 48 HArD kits, valued at \$1.7 million, and in August 2004, the Air Force procured 98 HArD kits, valued at \$3.9 million, from OHEAC through the GSA Federal supply schedule.

**Crew Protection Kits for Heavy Tactical Vehicles.** In February 2004, TACOM LCMC awarded a sole-source letter contract<sup>12</sup> for 50 percent of a not-to-exceed amount of \$29.8 million to Simula for crew protection kits (kits). The kits consisted of armor-piercing incendiary protection on the windows, doors, and side and front walls; high-explosive protection for cabin walls; and floor protection against anti-personnel mines. The Army installed kits on unarmored heavy tactical vehicles for protection against small arms fire, mine blast protection, and

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<sup>11</sup>Original contract was for 1,500 HArD kits. A contract modification, dated September 2004, added 27 more HArD kits.

<sup>12</sup>A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies. These contracts are used when the Government's interests demand that the contractor be given a binding commitment so that work can start immediately. The maximum liability of the Government in the letter contract should be the estimated amount necessary to cover the contractor's requirements for funds before definitization and must not exceed 50 percent of the estimated cost of the definitized contract.

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artillery fragmentation. The kits were purchased for the following heavy tactical vehicles: HEMTT, PLS, HET, and M915 truck series. TACOM LCMC awarded the contract to Simula based on an urgent requirement to support the Global War on Terrorism and because Simula previously produced 186 HEMTT kits for DoD during the Bosnia conflict. TACOM LCMC officials stated they did not believe any other contractors had the necessary experience with the HEMTT kit production to meet their time frame requirement. On April 16, 2004, TACOM LCMC definitized the letter contract for the production of 271 HEMTT kits, the development and production of 541 PLS kits, and the development of kits for the HET and the M915 truck series, valued at \$39.5 million. TACOM LCMC purchased a total of 2,526 HEMTT kits; 1,250 PLS kits; 796 HET kits; 1,328 M915 kits; and other related accessories in subsequent contract modifications for a total award amount of \$265.9 million as of November 16, 2006. See finding B for a discussion on the contractor Simula.

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## **A. Contracting Practices for Force Protection, Inc., Armored Vehicles**

MCSC awarded sole-source contracts to FPI for the JERRV even though MCSC officials knew other sources were available for competition.

MCSC officials awarded sole-source contracts for the JERRV on the basis that FPI was the only contractor capable of producing the armored vehicles within the urgent delivery schedules required to support the Global War on Terrorism. As a result, MCSC continued to award contracts for armored vehicles to FPI, even though FPI did not perform as a responsible contractor and repeatedly failed to meet contractual delivery schedules for getting the vehicles to the theater.

In addition, TACOM LCMC and MCSC officials did not adequately justify the commercial nature of three commercial contracts with FPI for the Cougar and Buffalo. TACOM LCMC and MCSC contracting officials issued commercial contracts because they loosely interpreted the commercial item definition to fit their contract circumstances. Further, they did not adequately document their rationale for using commercial item acquisition procedures. As a result, TACOM LCMC and MCSC decisions to award commercial contracts to FPI may have limited the Government's ability to ensure it paid fair and reasonable prices for the contracts.

### **Sole-Source Contracts for the Cougar and JERRV**

MCSC officials stated that the sole-source awards to FPI for the JERRV were supported by FAR 6.302-2, "Unusual and Compelling Urgency," which permits other than full and open competition when unusual and compelling urgency prevents full and open competition. In addition, MCSC officials based the sole-source award to FPI for the JERRV on the use of Public Law 107-314, "Rapid Acquisition and Deployment Procedures," section 806. Finally, MCSC officials stated that the decision to sole source the award to FPI was made by the Joint Improvised Explosive Device Defeat Integrated Process Team based on urgent need.

MCSC program and contracting officials stated that although other potential sources were available for competition, the MCSC officials awarded sole-source contracts to FPI for the Cougar and the JERRV because FPI was the only contractor capable of producing the armored vehicles within the urgent delivery schedules required. Specifically, MCSC officials stated that they awarded sole-source contracts to FPI for the Cougar and the JERRV based on:

- the results of adequate market research,
- documented survivability performance characteristics of the vehicles, and

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- FPI's ability to deliver the vehicles within the urgent delivery schedules required.

We determined, however, the MCSC justification for awarding the sole-source contracts was questionable because MCSC officials knew that viable competition was available and were aware of significant concerns with FPI's delivery capability. In addition, Marine Corps officials did not pursue competition as contracts continued to be awarded, which raises concerns about the recurring justification for urgency.

MCSC officials issued a sole-source contract to FPI for 27 Cougars in April 2004. The Cougar name changed to the JERRV, and as the new procurement agent for the JERRV, MCSC awarded a sole-source contract to FPI for 122 JERRVs for the Marine Corps and the Army in May 2005. MCSC officials awarded a second sole-source contract to FPI for 79 JERRVs in May 2006. Those contracts are referred to in this report as the Cougar contract, the first JERRV contract, and the second JERRV contract, respectively.

## **Acquisition Strategy Options for the JERRV**

MCSC officials stated that as a result of their market research for the first JERRV contract, they proposed two acquisition strategy options to the Joint Improvised Explosive Device Defeat Integrated Process Team. One option proposed a full and open competition. The other option proposed using the authority of FAR 6.302-2 as an exception to full and open competition supported by Public Law 107-314, section 806. MCSC officials stated that the Joint Improvised Explosive Device Defeat Integrated Process Team selected the sole-source option based on the urgent need.

The Joint Improvised Explosive Device Defeat Integrated Process Team was part of the Joint Improvised Explosive Device Defeat Task Force, a joint DoD activity. The task force operates under the control of the Deputy Secretary of Defense and is responsible for reducing or eliminating the effects of all forms of improvised explosive devices used against U.S. and Coalition Forces. The Joint Rapid Acquisition Cell (JRAC) is designated by the Secretary of Defense as the administrator for Public Law 107-314, section 806 as amended by Public Law 108-375, "Rapid Acquisition Authority to Respond to Combat Emergencies," section 811. JRAC is the single point of contact within the Office of the Secretary of Defense responsible for addressing the urgent needs of the joint warfighter; its responsibilities include validating joint urgent operational needs as immediate warfighting needs. JRAC does not duplicate functions of the procuring agency nor does it provide direct funding for satisfying the urgent needs; however, JRAC works with the Under Secretary of Defense (Comptroller) to find funding within DoD. JRAC facilitated the rapid sole-source acquisition for the JERRVs. MCSC officials stated that the Joint Improvised Explosive Device Defeat Integrated Process Team was responsible for obtaining Deputy Secretary of Defense section 806 authority and funding for the sole-source buy.

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Documentation on meetings and discussions between senior MCSC personnel and others indicate that the MCSC personnel planned to procure 122 JERRVs on the first JERRV contract for JRAC. The documentation also indicates that during discussions on the pending procurement, MCSC officials' efforts to compete the JERRV procurement were met with strong resistance; the requirements for mine and ballistics protection were not clearly understood by JRAC; and MCSC supported a competitive procurement for the JERRV and had knowledge of several vendors that had vehicles with similar capabilities.

For example, e-mails between senior MCSC personnel discussed a March 31, 2005, meeting with senior MCSC officials and officials from the Office of Assistant Secretary of the Army and Office of the Secretary of Defense on the Mine Resistant Vehicle program. The e-mails also summarized the results of a March 30, 2005, pre-meeting on the same subject. In one e-mail, a senior MCSC official states: "We currently have a contract for 27 Cougars .... In addition, of the 122 to be bought, 38 are for Marine Corps. We do believe strongly this needs to be competed and ballistically tested." The same document acknowledged the MCSC concern that "the Cougar is a good vehicle, but it did have growing pains and was [initially] purchased for a narrow mission set." The e-mail summarized the results of the March 30, 2005, meeting, stating

[The MCSC] plan called for competition, testing to meet the mine and ballistic requirements, and options to procure production units. It became clear that the requirements for mine and ballistic protection are not clearly understood by the JRAC. There was discussion about sole sourcing to the manufacturer of Cougar. We indicated there are several vendors with similar capability and we should run a competition to include ballistic and mine testing to validate their capabilities. There was great resistance to competing and doing anything other than buying what currently exists, and accepting the marketed capabilities of [that] system...The JRAC discussed their ability to procure up to \$100M of urgent and compelling equipment but that would require a sole source, not a competitive procurement, to justify its use.

An e-mail written the next day documented the following decisions:

Continue the MC [Marine Corps] Cougar testing currently taking place...there is an Urgent and Compelling need for MRVs [Mine Resistant Vehicles]...Cougar is the best system currently available...it was proposed to buy 68 of the 122 sole source ASAP [as soon as possible]...[and] MCSC would be the procuring agent for this effort.

It is clear from the March 2005 e-mails that as of March 30, 2005, MCSC senior officials strongly supported a competitive procurement for the JERRV contract. However, the e-mails also indicate that a March 31, 2005, meeting between senior officials resulted in the proposal for a sole-source purchase. MCSC officials stated that the Joint Improvised Explosive Device Defeat Integrated Process Team selected the sole-source option.

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## Market Research

MCSC contracting officials stated that the sole-source award to FPI for the Cougar and the JERRV was based, in part, on the results of adequate market research. However, MCSC officials were unable to provide sufficient documentation to support their market research results. In addition, market research documents provided by MCSC officials on the JERRV indicated conflicting market research results.

**Market Research for the Cougar.** MCSC contracting officials stated that the sole-source selection was based on the results of adequate market research. The justification and approval document for the Cougar stated that MCSC program and contracting officials conducted market research and additional competitors had been identified. The justification and approval document also stated that using full and open procurement procedures would be untimely and unresponsive, and purchasing the vehicle from another contractor would result in higher costs and longer delivery times. However, contracting personnel stated that they did not have any documentation supporting the statement that additional costs or longer delivery times would result from competition. In addition, MCSC officials could not provide any document to support the results of the market research results. As a result, we could not verify whether purchasing a vehicle from another contractor would have resulted in higher costs and longer delivery times.

**Market Research for the JERRV.** MCSC officials were also unable to provide documentation to support their market research results for the JERRV. The justification and approval document for the Cougar contract stated that MCSC would compete any future procurements for the JERRV. However, the justification and approval document for the JERRV stated that competition would be inappropriate because of the unusual and compelling urgent nature of the requirement. Documentation provided by MCSC officials was not conclusive and indicated conflicting research results. The only document that program officials provided to support market research efforts for the JERRV was a briefing chart that the officials stated reflected the market research results. The chart compared the performance characteristics of six different armored vehicles manufactured by six different companies. The chart showed that the JERRV was the only viable vehicle because it was the only vehicle that met armor piercing and anti-tank requirements. Program officials were unable to provide support documentation on the data source used to develop the market research results summarized on the briefing chart.

After we obtained the briefing chart from program officials, contracting officials provided a chart to us and stated that the chart reflected the market research results. This chart was very similar to the program office chart with two exceptions: first, the contracting office chart compared the performance characteristics of nine different armored vehicles manufactured by nine different companies. Second, the contracting office chart showed that two vehicles, the JERRV and a second vehicle, met the armor piercing and anti-tank requirements. Contracting officials were unable to provide supporting documentation on the data source used to develop these market research results.

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When we showed the chart from the program office to the contracting officials, the contracting officials were unable to explain why the program office chart indicated different market research results; in particular, the contract officials could not explain why the program office chart showed that the JERRV was the only vehicle to meet the armor piercing and anti-tank requirements. Although the program office chart indicated that only the JERRV met the requirements, the program office chart also indicated that the manufacturer of the potential second vehicle had a production rate of 40 vehicles per month while FPI had a production rate of 20 vehicles per month.

When we asked the Assistant Commander for Contracts about the discrepancy in the two charts, he responded that the contracting official summarized the results of the market research and then forwarded the summary to the program office. He further explained that the program office made changes to the summary based on their technical expertise. When we requested support documentation from the Assistant Commander for Contracts for the market research results, he explained that the results came from contractors' responses to the request for information, and that his office could locate only two contractor responses. We obtained both contractors' responses; neither response was from FPI or the manufacturer of the second vehicle that met the requirements according to the contracting office chart.

MCSC officials subsequently provided a third chart stating that it represented the market research results. The chart was identical to the one provided earlier by the contracting office with one exception: the chart was missing the column of data related to the vehicle previously identified by the contracting office as meeting the same requirements as the JERRV.

In summary, contracting officials stated that the sole-source awards for the procurement of the Cougar and the JERRV were supported by market research results. The MCSC officials were unable to provide support for the results of the market research conducted for the Cougar. However, we did not find any evidence that MCSC officials were aware of available competition for the Cougar, so the sole-source award may have been appropriate. MCSC officials provided three similar one-page charts that illustrated the MCSC market research results for the JERRV. Each chart indicated different market research results. Some of the results indicated that another company had a vehicle similar to the JERRV, and the company had potentially better delivery capability. Limited available documentation indicated that the MCSC performed market research for the Cougar contract and the first JERRV contract; however, we could not determine whether the research was adequate. More importantly, contracting officials were unable to provide any documentation to support the market research results to include the final determination that FPI was the most viable contractor for the JERRV procurement.

Finally, MCSC officials continued to cite market research results as support for the sole-source award to FPI for the JERRV; however, the e-mails previously discussed in this report indicate that MCSC officials strongly supported a competitive procurement until March 30, 2005. Market research for the JERRV was conducted in January 2005. Even if an initial award might have been appropriately justified as urgent, prudent business practices would have shown

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that planning was needed to perform comprehensive market research and begin to seek competition because a long-term need for the vehicles was likely.

## Documented Survivability Performance Characteristics

MCSC officials stated that the MCSC awarded sole-source contracts to FPI for the Cougar and the JERRV because of their survivability performance characteristics. However, MCSC officials did not provide any documentation to support the survivability performance characteristics of the Cougar. Given that this was the first contract with FPI for this vehicle, we do not believe such data existed, and it could not be provided by MCSC officials to justify a sole-source award. Documented survivability performance characteristics data were available for the first JERRV contract as a result of vehicle performance under the Cougar contract. However, MCSC officials were unable to provide supporting documentation on the performance characteristics data used to support the sole-source procurement; as a result, we could not verify that the decision to award a sole-source contract to FPI for the JERRV was supported by the data.

MCSC officials stated that MCSC awarded a sole-source contract to FPI for the JERRV based primarily on the JERRV's survivability performance characteristics. Specifically, the Assistant Commander for Contracts stated that MCSC awarded the sole-source contract to FPI for the JERRV despite available competition because the Government had independently tested the ballistic protection requirement for the JERRV armor and the JERRV had the highest payload capacity. In addition, the justification and approval document for the first JERRV contract stated:

No other source can provide the required protective capability in areas of armor, glass, payload and vehicle design in the necessary timeframe or without undertaking a sizable development effort to equal the current protection and capability set of the Cougar JERRV. Furthermore, Force Protection is the only company whose EOD [Explosive Ordnance Disposal] armoring solution has been tested and certified by the Government for 50 caliber M2AP armor protection.

However, the JERRV had not been tested at the time the justification and approval document was prepared and so the test results were not available as a basis for making the sole-source award. In addition, we were unable to verify payload capacity data comparisons because MCSC officials could not provide support for the results.

**Armor Ballistic Protection.** The MCSC rationale for awarding the JERRV contract to FPI based on the Government's ballistic test on the JERRV's armor was questionable. According to a ballistics test manager at Aberdeen Test Center,<sup>13</sup> testing officials conducted ballistic protection tests on the

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<sup>13</sup>Aberdeen Test Center is one of seven commands under the Developmental Test Command. Aberdeen Test Center tests a wide range of equipment for DoD, including armor solutions.

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Cougar<sup>14</sup> from April 8, 2005, through July 29, 2005. The Aberdeen Test Center issued the final report on the ballistic protection tests on the Cougar in September 2005. However, contracting officials prepared the justification and approval document for the JERRV contract on April 25, 2005, and awarded the contract on May 13, 2005. Therefore, ballistic testing had begun approximately 2 weeks before the justification and approval document was approved, but the tests results were not available for another 3 months and were not available when the MCSC documented the justification for the sole-source award.

**Payload Capacity.** The contracting officer stated that payload capacity data was collected from FPI and other companies during market research. As previously discussed, MCSC officials stated that market research results were documented in the chart provided; however, none of the three charts provided by different MCSC officials included payload capacity data. As a result, we could not review the payload capacity data to verify whether the JERRV had the highest payload capacity.

## FPI Vehicle Delivery

MCSC program and contracting officials stated that even though other potential sources were available for competition, MCSC officials awarded sole-source contracts to FPI for the Cougar and the JERRV based, in part, on FPI's ability to meet the urgent delivery requirements for the vehicles to support the Global War on Terrorism. However, our review indicated that FPI performance on the Cougar and the first JERRV contracts failed to meet FAR 9.104-1, "Responsible Prospective Contractors General Standards," which requires that a contractor be able to comply with required or proposed delivery schedules. In addition, FPI failed to meet Army contract delivery schedules for the Buffalo. See Table 4 for additional details.

**FPI Delivery of Cougars.** MCSC contracting officials revised contractual delivery schedules for the Cougar contract to help FPI meet the contractual delivery requirement. FPI failed to deliver the first 4 of 28 Cougars in accordance with the original contractual delivery schedule. Subsequently, the MCSC administrative contracting officer sent a show cause notice<sup>15</sup> to FPI for failure to perform in accordance with the delivery schedule. The contracting officer notified the program manager that the contracting office wanted to add a liquidated damages clause to the contract or terminate the contract for default. However, the MCSC contracting officer stated that he did not execute either action because program officials thought assessing liquidated damages could be punitive, and program officials did not want to terminate the contract. Instead, the contracting officer revised the delivery schedules on two occasions, and MCSC received field service representative support from FPI for 6 months as

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<sup>14</sup>The ballistic protection tests were conducted on the 28th Cougar from the Cougar contract.

<sup>15</sup>A show cause notice is a document that directs the contractor to justify why the contracting officer should not issue a cure notice or terminate the contract by default. A cure notice is a document that directs the contractor to remedy an alleged breach of contract. Failure to cure within a given time period allows the contracting officer to terminate the contract by default.

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consideration for revising the delivery schedules. A comparison of actual delivery dates with the final revised delivery schedule indicated that FPI delivered 12 of the 28 Cougars more than 30 days late.

**FPI Delivery of JERRVs.** The April 25, 2005, justification and approval document for the first JERRV contract stated that

with all of the enhancements to the production capacity and manufacturing procedures, Force Protection, Inc. will have the capability to produce 20 vehicles per month, up from its current production of 4 vehicles per month. As a result, Force Protection Inc. will be able to deliver the required 122 vehicles by February 2006.

Although the justification and approval document for the first JERRV contract stated that FPI produced four vehicles per month, FPI had already demonstrated on the Cougar contract that it had a history of failing to meet delivery schedules. Our review of the Cougar contract delivery documents indicated that FPI generally failed to meet the delivery schedules and delivered an average of 2.1 vehicles per month. Specifically, FPI delivered 24 (86 percent) of 28 Cougars more than 30 days late based on a comparison of the actual delivery dates with the original delivery schedule. FPI delivered 12 (43 percent) of 28 Cougars more than 30 days late based on a comparison of the actual delivery dates with the revised delivery schedule.

**Facilitation Fee Paid to Increase Production Capability.** FPI did not have the “enhanced production capability and manufacturing procedures” stated in the justification and approval document; MCSC contracting officials included a \$6.7 million facilitization fee after the first JERRV contract was awarded to upgrade and expand production facility to meet the urgent delivery requirement. Had Marine Corps officials provided the facilitization fee to a competitor, the competitor may have been able to provide vehicles on an expedited schedule. Furthermore, the MCSC contracting officer revised contractual delivery schedules for the JERRVs before the contract was definitized to help FPI meet the contractual delivery requirements and avoid liquidated damages. In some instances, the contracting officer revised the delivery schedules after the contractor had already failed to meet delivery requirements.

**Delivery Schedules Revised Before Contract Definitized.** MCSC officials stated that FPI’s ability to meet delivery requirements was significant to the sole-source justification; however, MCSC officials began revising agreed-upon delivery schedules before the contract was definitized and before vehicles were delivered. Although modifications to undefinitized contracts are not prohibited, we take exception to this situation. MCSC officials decided to award the JERRV contract to FPI based, in part, on FPI’s ability to meet urgent delivery requirements. MCSC officials then paid fees to improve the contractor’s production capability so that the contractor could meet the agreed-upon delivery requirements. Further, MCSC officials then extended the delivery schedules after the contractor failed to meet the original delivery schedules.

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Furthermore, the contracting officer stated that FPI did not provide timely and adequate contract proposal data to the Defense Contract Audit Agency for audit and, as a result, contract definitization was delayed. The Defense Contract Audit Agency subsequently reported that the cost proposal could not be used as a basis for negotiating a fair and reasonable price, and the contracting officer made a fair and reasonable price assessment through price analysis. The contracting officer did not definitize the JERRV contract within 180 days as required by FAR 16.603-2.<sup>16</sup> The contracting officer definitized the JERRV contract on April 17, 2006, which was 340 days after the issuance of the letter contract on May 12, 2005.

**Delivery Schedule Revisions.** The first JERRV contract initially required FPI to deliver vehicles within 270 days of the award of the delivery order, making the vehicles due in February and March 2006. However, in June 2005, before contract definitization, MCSC provided FPI a \$6.7 million facilitization fee<sup>17</sup> to upgrade and expand facilities and accelerate deliveries. Consequently, FPI proposed an accelerated delivery schedule, which provided exact vehicle delivery dates from August 2005 through February 2006. We refer to this schedule as the original contract delivery schedule in our assessment of deliveries because this was the schedule in place before FPI delivered any vehicle on this contract.<sup>18</sup> On October 11, 2005, FPI submitted an updated delivery schedule, which delayed vehicle deliveries, but agreed-to delivery dates were still within the August 2005 through February 2006 timeframe. However, FPI failed to meet the original delivery schedule and the updated delivery schedule. Consequently, on November 23, 2005, the contracting officer issued a cure notice. The contracting officer revised the delivery schedule again on January 23, 2006; as a result, several vehicles that were delivered late according to the updated delivery schedule were no longer considered late deliveries. MCSC received four weeks of support from a technical writer as consideration for the January 23, 2006, delivery schedule revision; however, the consideration was nominal compared with the amount MCSC could have levied had they sought liquidated damages.

**Liquidated Damages Assessment.** The contracting officer stated that MCSC placed a liquidated damages clause in the contract to protect the Government's investment of \$6.7 million. The liquidated damages clause charged a fee of \$54,918 for each vehicle delivered late. A comparison of the actual delivery dates with the original delivery schedule indicated that FPI

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<sup>16</sup>Allowing a contract to be awarded before definitization permits the contractor to begin work before the price of the contract has been defined and agreed upon by both parties. Although this approach allows the Government to award a contract quickly and the contractor to begin work immediately, failure to definitize in a timely manner could result in unnecessary costs and create a disadvantageous negotiating position for the Government.

<sup>17</sup>The facilitization fee was added to the contract by increasing the cost of each of the first 88 vehicles after the letter contract was signed. However, the fee was not added to the contract by modification, and there was no documentation to support the action until the contract was definitized and a contract line item number was added to reflect the \$6.7 million fee.

<sup>18</sup>This schedule was not in the contract file. We obtained the proposed accelerated delivery schedule from DCMA; DCMA used the accelerated delivery schedule for inspecting and accepting the vehicles. The contracting officer confirmed that this was the proposed accelerated delivery schedule; however, the contracting officer stated that it was not in the contract file because FPI did not provide the schedule to the contracting officer.

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delivered 120 (98 percent) of 122 JERRVs late, 115 of which were more than 30 days late. As a result, had the contracting officer not revised delivery schedules, liquidated damages of \$54,918 would have been due back from the contractor for each of the 120 vehicles delivered late, for a total of approximately \$6.6 million. However, the contracting officer stated that FPI had cash flow problems and backcharging the \$6.6 million would have caused the company financial difficulty. Even after MCSC revised the delivery schedules, FPI delivered vehicles late. FPI delivered 33 (27 percent) of 122 JERRVs more than 30 days late based on a comparison of the actual delivery dates with the final revised delivery schedule. Thus, even if liquidated damages were assessed on the questionable final revised schedule, FPI could owe \$1.8 million for the 33 late vehicles. MCSC officials backcharged FPI for \$439,344 in damages and was in the process of determining additional liquidated damages for this contract based on the final revised delivery schedule.

**FPI Delivery of Army Buffalos.** FPI did not meet contractual delivery schedules for four Army Buffalo contracts. Contracting officials at CECOM and TACOM LCMC awarded contracts to FPI for the Buffalo in September 2002, May 2004, November 2004, and February 2006 for a total of 87 Buffalos. FPI delivered 55 (63 percent) of the 87 Buffalos more than 30 days late based on a comparison of actual delivery dates with original contractual delivery dates. On the first 3 Army contracts, FPI delivered all 46 Buffalos more than 30 days late. A comparison of actual delivery dates with the revised contractual delivery dates indicated that FPI delivered 13 (15 percent) of 87 vehicles more than 30 days late even after the delivery schedules had been revised one or more times. See Table 4 for additional details.

FPI repeatedly failed to meet contractual delivery schedules for the Buffalo contracts, and the Army continued to award sole-source contracts to FPI for the Buffalo. However, we found no indication that other sources were available for competition for the Buffalo.

**Table 4. FPI Delivery Requirements for Armored Vehicles**

<u>Contracts</u>	<u>Vehicles</u>	<u>Original Schedules</u>		<u>Final Revised Schedules</u>	
		Vehicles Delivered	Vehicles >30 Days Late	Vehicles Delivered	Vehicles >30 Days Late
<b>Army</b>					
DAAB15-02-C-0036	10 Buffalos	10	100	9	90
W909MY-04-C-0034	21 Buffalos	21	100	3	14
W909MY-05-C-0001	15 Buffalos	15	100	1	7
W56HZV-06-C-0245*	41 Buffalos	9	22	-	-
<b>Total</b>	<b>87</b>	<b>55</b>	<b>63</b>	<b>13</b>	<b>15</b>
<b>Marine Corps</b>					
M67854-04-D-5099	28 Cougars	24	86	12	43
M67854-05-D-5091	122 JERRVs	115	94	33	27
M67854-06-D-5042*	79 JERRVs	0	0	-	-
M67854-05-C-5178*	4 Buffalos	0	0	-	-
<b>Total</b>	<b>233</b>	<b>139</b>	<b>60</b>	<b>45</b>	<b>30**</b>

\*These contracts did not have revised delivery schedules.

\*\*This percentage does not include the Marine Corps contracts for 79 JERRVs and 4 Buffalos because there were no revised delivery schedules.

## Unusual and Compelling Requirements

In the justification and approval documents for the Cougar and JERRV contracts with FPI, MCSC officials cited section 2304(c)(2), title 10, United States Code, as implemented by FAR 6.302-2. These regulations permit an agency to limit the number of sources from which it solicits bid or proposals when unusual and compelling urgency prevents full and open competition, and delay in award of a contract would result in serious injury, financial or other, to the Government. Although they did not document it in the contract file or in any contract documents, MCSC officials stated that Public Law 107-314, section 806 supported their FAR 6.302-2 authority to limit full and open competition. Section 806 gives the Secretary of Defense the authority to rapidly acquire equipment urgently needed to eliminate a combat capability deficiency that has resulted in combat fatalities. Under section 806, the Secretary of Defense designates a senior official to ensure that the needed equipment is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the equipment within 15 days. In addition, section 806 authorizes the waiver for any provision of law, policy, directive or regulation addressing the establishing of the requirement for the equipment; the research, development, test and evaluation of the equipment; or the solicitation and selection of sources and the award of the contract for procurement of the equipment.

We do not challenge the authority or the need for FAR 6.302-2 or Public Law 107-314, section 806 to meet unusual and compelling or urgent requirements for supplies or services. However, it is clear that even though MCSC awarded the

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sole-source contract to FPI for the JERRV, other contractors were available for competition, and FPI's delivery capability was questionable. FAR 6.302-2 permits an agency to limit the number of sources for competition; however, it does not provide full discretionary power for awarding sole-source procurements. Limitations to the statutory authority require agencies to request offers from as many potential sources as is practicable. We found sufficient evidence that MCSC officials believed the procurement should have been competed, that they knew viable competition was available, and that they were aware of the significant issues associated with FPI's ability to meet their contractual delivery obligations. Had other contractors been provided with assistance such as facilitization fees and relaxed delivery schedules, a number of other systems may have been available to help MCSC in meeting the urgent requirements. At a minimum, MCSC officials should have considered other acquisition strategies such as limited competition or split procurement. As a result, the MCSC officials' decision to make the sole-source award may not have been in the best interest of the Government and DoD.

## **Additional Award of Sole-Source Contracts for the JERRV**

Despite FPI's late deliveries on the first JERRV contract, MCSC officials awarded FPI a second contract in May 2006 for 79 JERRVs. A contracting official stated that a vendor contacted the contracting officer to discuss consideration for the second JERRV contract. When we asked the contracting officer about the discussion, he stated that there were no formal challenges to the sole-source award. In November 2006, MCSC officials awarded a third contract to FPI for 200 JERRVs under the MRAP program.

FAR 9.104-1 requires that a prospective contractor be able to comply with required or proposed delivery schedules and have adequate financial resources or the ability to obtain adequate financial resources necessary to perform the contract. FPI failed to meet the delivery requirements for the first JERRV contract even though MCSC officials paid FPI \$6.7 million to help upgrade and expand their production facility to meet the urgent delivery requirements. Further, the contracting officer stated that the MCSC could not backcharge liquidated damages of approximately \$6.6 million associated with late deliveries because FPI had cash flow problems, and backcharging the \$6.6 million would have caused the company financial difficulty. Clearly, FPI did not meet the FAR 9.104-1 requirements of a contractor.

In addition, DCMA completed a financial review as part of what was supposed to be a pre-award survey for the second JERRV contract. The DCMA review concluded that FPI's financial ability to perform the contract was high risk. However, the survey was completed in June 2006, and MCSC officials had already awarded the second JERRV contract in May 2006.

Furthermore, FPI relied on the Army and the Marine Corps for 100 percent of its sales as of March 31, 2006. FPI officials stated in the Securities and Exchange Commission financial filings that if either the Army or the Marine Corps did not place future orders for vehicles, it would have a dramatic negative effect on the

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company's financial performance, and FPI would not likely be able to stay in business.

Clearly, FPI did not have the ability to comply with required or proposed delivery schedules or have adequate financial resources to perform the second JERRV contract.

## Commercial Contracts for the Buffalo and Cougar

FAR 2.101, "Definitions," states that a commercial item can be an item that is of a type customarily used by the general public or nongovernmental entities for purposes other than governmental purposes and has been sold, or offered for sale, to the general public. The FAR also states that a commercial item can be an item that is based on evolving technology that is not yet available in the commercial marketplace, but that will be available in time to satisfy the Government's requirement; an item that requires modifications that are usually available in the marketplace; or an item that requires minor modifications of a type not customarily available in the commercial marketplace that meet Government requirements and do not alter the nongovernmental function or physical characteristics of the commercial item. In addition, the FAR states that a commercial item can also be a nondevelopmental item that has been developed at private expense, and that is sold in substantial quantities, on a competitive basis, to State and local governments.

**Army Contract.** The TACOM LCMC did not adequately justify or document the commercial nature of one contract awarded to FPI in February 2006 for 41 Buffalos. The TACOM LCMC program manager and contracting officer stated that the Buffalo was a commercial item because the components of the Buffalo were commercial items. The contracting officer also stated that the Buffalo was a commercial item because the Buffalo was a nondevelopmental item sold in other countries; however, the FAR requires that the nondevelopmental item is sold to other State or local governments, not other countries. Although we could not determine whether FPI sold the Buffalo to State or local governments, the FPI Securities and Exchange Commission 10Q financial filing, May 15, 2006, indicated that FPI relied on the Army and the Marine Corps for 100 percent of its sales.

The FAR does not include any provision that qualifies the Buffalo as a commercial item. The contracting officer's rationale for the commercial nature of the Buffalo was inadequate because a nondevelopmental item is not necessarily a commercial item. Further, modifying a commercial transportation vehicle into a vehicle with a unique military requirement of ballistics, mine, and improvised explosive device protection significantly alters the nongovernmental function of the commercial transportation vehicle. For example, the Buffalo's 30-foot robotic arm and iron claw used for examining and removing improvised explosive devices undoubtedly indicates the military-unique requirement to support the current effort in the Global War on Terrorism. Further, the Buffalo costs approximately four times more than and weighs approximately four times more than the original commercial truck chassis purchased to build the Buffalo.

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TACOM LCMC officials not only limited the potential for establishing a reasonable price through competition, but also gave away the protection provided by the Truth in Negotiations Act by considering the procurement commercial.

**Marine Corps Contracts.** The MCSC contracting officer did not adequately justify the commercial nature of one contract awarded in April 2004 for the Cougar and one contract awarded in September 2005 for the Buffalo. Contracting officials stated that they issued the contracts as commercial contracts because FPI offered the Cougar and the Buffalo for sale to the public or nongovernmental entities. Although the Cougar and the Buffalo may have been offered for sale to the public or nongovernmental entities, the vehicles are not of a type customarily used by the general public or nongovernmental entities for purposes other than governmental purposes. Specifically, modifying a commercial transportation vehicle into a vehicle with a unique military requirement of ballistics, mine, and improvised explosive device protection significantly alters the nongovernmental function of a commercial transportation vehicle. Further, the Buffalo's 30-foot robotic arm and iron claw used for examining and removing improvised explosive devices undoubtedly indicates the military-unique requirement to support the current effort in the Global War on Terrorism. Allowing the vehicle to be treated as a commercial item when no established commercial market existed clearly was not in the best interest of the Government.

At a post-award conference for the Cougar contract in May 2004, contracting officials determined that the Cougar would not meet the commercial item definition due to anticipated specification changes and unique military requirements. The contracting office did not award the two subsequent contracts for the JERRV as commercial contracts. However, subsequent to the post-award conference, MCSC officials issued a contract for four Buffalos as a commercial contract. MCSC contracting officials should have acknowledged the Buffalo's unique military requirements and should not have awarded the Buffalo contract as a commercial contract.

## Conclusions

The MCSC contracting officials stated that they awarded the sole-source contracts to FPI based on:

- adequate market research,
- documented survivability performance characteristics,
- the contractor's ability to meet urgent delivery requirements, and
- unusual and compelling requirements.

However, the MCSC decisions to award sole-source contracts to FPI were questionable. We believe officials conducted market research. However, the market research results were almost completely unsupported by documentation. In addition, market research was conducted in January 2005; e-mails indicated

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that MCSC officials strongly supported a competitive procurement until March 30, 2005. Furthermore, MCSC contracting officials acknowledged that other competitors were available even though MCSC awarded sole-source contracts to FPI for the JERRV. A key market research document indicated that another contractor could potentially meet the survivability characteristics and in much less time than FPI required to deliver Cougars and JERRVs.

The award of sole-source and commercial contracts could limit the ability of TACOM LCMC and MCSC officials to ensure fair and reasonable prices for the contracts and achieve the best value for the Government. We recognize that the nature of supporting unusual and compelling requirements does not lend itself to exact and complete documentation and records management. Waivers and exceptions to policies and procedures for routine contract award efforts have been documented and are sometimes critical to meeting urgent wartime requirements. It is inherent to basic contracting principles, however, that contracting officials do not implement waivers and exceptions to the safeguards and protections provided by the Federal rules for competition unless they have sound justification for waivers and exceptions. A decision to execute a rapid acquisition by contracting with a company that has not demonstrated acceptable performance and responsibility may not be in the best interest of the Government. In addition, late delivery of the armored vehicles to theater may hinder the warfighters' ability to execute mission requirements and increase risk to soldiers' lives. The MCSC contracting officer should compete future contracts for the JERRV because other available sources may be capable of producing comparable vehicles.

Although full and open competition may not have been an appropriate acquisition strategy given the unusual and compelling requirement for a mine resistant vehicle, MCSC officials should have considered other acquisition strategies such as limited competition or split procurement. MCSC officials might have identified other vendors capable of producing vehicles to help meet the unusual and compelling requirements in support of the Global War on Terrorism.

As a separate point, the Cougars and the JERRVs proved to have significant and operational value to our warfighters on the field. We reviewed documentation from users and classified data on vehicle performance and learned that the vehicles performed well and saved lives.

In January 2007, as part of the effort to address protection from improvised explosive devices, MCSC officials competitively awarded nine contracts to nine manufacturers requiring each manufacturer to produce four MRAP vehicles for test and evaluation. MRAP is a family of vehicles; the contracts cover two categories of MRAP vehicles. Category I is the smaller, lighter Mine Resistant Utility vehicle for urban combat operation. Category II is a larger, medium-sized JERRV for multimission operation such as convoy lead, troop transport, ambulance, explosive ordnance disposal, and combat engineering. The quantity requirement for MRAP vehicles was under review by the Joint Requirements Oversight Council.

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## Management Comments on the Finding and Audit Response

**TACOM Life Cycle Management Command Comments.** The Acting Chief of Staff, TACOM Life Cycle Management Command commented on statements in the finding of a draft of this report concerning the issuance of a commercial contract for the Buffalo. He stated that FAR Part 12 allows the contracting officer to determine price reasonableness on facts other than certified cost and pricing data. He also stated that contract negotiations were based on a detailed cost analysis supported by a Defense Contract Audit Agency audit report on the contractor's proposal. He further stated that certified cost and pricing data provides the Government protection against defective pricing under the Truth in Negotiations Act.

**Audit Response.** We recognize that the TACOM LCMC contracting officer used a Defense Contract Audit Agency audit report to support contract negotiations on the Buffalo contract; and therefore, we deleted the sentence on pricing safeguards. However, TACOM LCMC still removed the protection provided by the Truth in Negotiations Act by considering the procurement commercial.

**Marine Corps Comments.** The Commandant of the Marine Corps commented on statements in the finding of a draft of this report. The Commandant stated that the report concluded that MCSC contracting officials awarded the sole-source contract to FPI based on adequate market research, documented survivability performance characteristics, the contractor's ability to meet urgent delivery requirements, and unusual and compelling requirements.

The Commandant stated that the statement in the draft report, "MCSC contracting officials did not follow the FAR when issuing commercial contracts to FPI for the Buffalo and the Cougar" was inaccurate. He stated that MCSC contracting officials did follow FAR procedures on market research; however, MCSC acknowledges that written documentation was not completed and all market research responses could not be located. He also stated that the vehicles qualify as commercial products because they were and are offered for use by nongovernmental organizations for the clearing and disposal of explosive ordnance. Furthermore, MCSC began contracting for these vehicles using FAR Part 15 procedures in lieu of FAR Part 12 commercial procedures in 2005.

The Commandant commented on the statement in the draft report that sole-source contracting was improper because "MCSC officials knew other sources were available." The Commandant stated that MCSC properly followed the FAR by getting justification for sole-source procurement via a justification and approval from the Assistant Secretary of the Navy for Research, Development, and Acquisition, citing the authority of FAR 6.302-2 or Public Law 107-314, section 806.

The Commandant also disagreed with the statement in the draft report that MCSC decisions to award commercial contracts to FPI may have limited the Government's ability to ensure it paid fair and reasonable prices for the vehicles. He stated that by using FAR Part 15 procedures and conducting a competitive

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acquisition, MCSC demonstrated that it paid fair and reasonable prices for the vehicles.

The Commandant commented on the statement in the draft report that takes exception to MCSC modifying the delivery schedule on the undefinitized JERRV contract. He stated that modifying delivery schedules on undefinitized contracts is a legal and acceptable practice and was not unexpected given the urgent nature of the action and that MCSC was trying to procure and field a complex, new vehicle system without the benefit of a lengthy and costly development phase.

**Audit Response.** The report did not conclude that MCSC officials awarded sole-source contracts to FPI for the Cougar and the JERRV based on the results of adequate market research, documented survivability performance characteristics, the contractor's ability to meet urgent delivery requirements, and unusual and compelling requirements. However, we recognize that the conclusion in the draft report did not properly attribute the reasons for the sole-source award to the MCSC contracting officials. Therefore, we have revised the conclusion statement accordingly. As we stated throughout the finding, we questioned the MCSC decisions to award sole-source contracts to FPI because MCSC officials knew that viable competition was available and were aware of significant concerns with FPI's delivery capability. In addition, Marine Corps officials did not pursue competition as contracts continued to be awarded, which raises concerns about the recurring justification for urgency.

As stated in the report, although the Cougar and the Buffalo may have been offered for sale to the public or nongovernmental entities, the vehicles are not of a type customarily used by the general public or nongovernmental entities for purposes other than governmental purposes. In addition, the vehicles did not meet the commercial item definition due to the unique military requirements of the vehicles. Further, at a post-award conference for the Cougar contract in May 2004, MCSC contracting officials determined that the Cougar would not meet the commercial item definition due to anticipated specification changes and unique military requirements and did not award the subsequent contracts for the JERRV as commercial contracts.

The report does not state that MCSC officials failed to follow FAR requirements for obtaining justification and approval documents for procuring armored vehicles. However, our report challenges the accuracy of the information in the justification and approval document used to justify the sole-source procurement. Specifically, the justification and approval document states that the JERRV was the only vehicle tested and certified by the Government for 50 caliber M2AP armor protection. However, the JERRV had not been tested at the time the justification and approval document was prepared, and so the test results were not available as a basis for making the sole-source award. In addition, the justification and approval document stated that FPI would have the capability to produce 20 vehicles per month, up from its production at the time of 4 vehicles per month. However, FPI had already demonstrated on the Cougar contract that it had a history of failing to meet delivery schedules. Our review of Cougar contract delivery documents indicated that FPI delivered an average of 2.1 vehicles per month.

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MCSC officials did not conduct a competitive acquisition for the Cougar and Buffalo contracts, and were unable to provide support documentation to demonstrate that MCSC had paid fair and reasonable prices for two commercial contracts for the Cougar and Buffalo. FAR 15.403-1 exempts the Government from obtaining certified cost or pricing data when a commercial item is being procured. Because the Cougar and the Buffalo were not true commercial items, marketplace pricing data were not readily available for MCSC contracting officials to use in determining fair and reasonable prices.

As stated in the report, modifications to undefinitized contracts are not prohibited, and we did not take exception to delivery schedule changes as a stand-alone issue. However, changes in delivery schedules were not based on urgent need. Rather, the changes were based on the fact that FPI repeatedly failed to deliver vehicles in accordance with the contract. In addition, FPI's ability to meet urgent delivery schedule requirements was the basis, in large part, for the MCSC decision to award the JERRV contract to FPI. Furthermore, MCSC officials paid fees to improve the contractor's production capability so that the contractor could meet the agreed-upon delivery requirements.

## **Recommendations, Management Comments, and Audit Response**

**Revised Recommendation.** As a result of management comments, we revised Recommendation A.2.b. to clarify that the recommendation pertains to the Buffalo Mine Protected Clearance Vehicle.

**A.1. We recommend that the Commander, Marine Corps Systems Command direct the Assistant Commander for Contracts to:**

- a. Continue to calculate and assess any additional liquidated damages for late delivery of vehicles on contract M67854-05-D-5091.**

**Management Comments.** The Commandant of the Marine Corps concurred, stating that MCSC will determine whether it is in the best interest of the Government to assess liquidated damages or seek other appropriate consideration for previous late deliveries before closing out the contract.

**Audit Response.** The comments are responsive, and no additional comments are required.

**b. Compete future contracts for the Joint Explosive Ordnance Disposal Rapid Response Vehicles.**

**Management Comments.** The Commandant of the Marine Corps concurred, stating that MCSC competitively awarded nine MRAP vehicle contracts in January 2007.

**Audit Response.** The comments are responsive, and no additional comments are required.

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**c. Include and enforce a liquidated damages and late delivery fees clause on future contracts with Force Protection, Inc.**

**Management Comments.** The Commandant of the Marine Corps concurred, stating that MCSC will consider incorporating a liquidated damages clause into future contracts with FPI as it does with all contracts. The Commandant further stated that FPI had four production lines operating and was producing vehicles at or exceeding the requirements of the MRAP contract in January 2007. The Commandant stated that FPI appears to have a solution to produce vehicles at an accelerated rate.

**Audit Response.** The comments are responsive, and no additional comments are required.

**d. Procure future Mine Resistant Ambush Protected vehicles under Federal Acquisition Regulation Part 15, “Contracting by Negotiation,” with negotiated prices based on certified cost and pricing data.**

**Management Comments.** The Commandant of the Marine Corps concurred, stating that MCSC shifted from commercial contracting to the use of FAR Part 15 procedures beginning with the 2005 contract. The Commandant further stated that competitive FAR Part 15 procedures were used in making the January 2007 competitive MRAP vehicle contract awards, and certified cost and pricing data were not required because adequate market price competition was available.

**Audit Response.** The comments are responsive, and no additional comments are required.

**A.2. We recommend that the Commander, TACOM Life Cycle Management Command, Army Materiel Command, direct the Director, Acquisition Center to:**

**a. Include and enforce a liquidated damages and late delivery fees clause on future contracts with Force Protection, Inc.**

**Management Comments.** The Acting Chief of Staff, TACOM Life Cycle Management Command concurred, stating that Acquisition Center personnel will be instructed to negotiate a liquidated damages and late delivery fee clause on future contracts with FPI. He stated the target date for completing this action is July 20, 2007.

**Audit Response.** The comments are responsive, and no additional comments are required.

**b. Procure future Buffalo Mine Protected Clearance Vehicles under Federal Acquisition Regulation Part 15, “Contracting by Negotiation,” with negotiated prices based on certified cost and pricing data.**

**Management Comments.** The Acting Chief of Staff, TACOM Life Cycle Management Command concurred. He stated that the TACOM LCMC Acquisition Center does not have the contracting mission for the Mine Resistant

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Ambush Protected vehicles, but did procure Buffalo Mine Protected Clearance Vehicles. The Acting Chief of Staff stated that Acquisition Center personnel will be instructed to follow procedures outlined in FAR Part 15 and obtain certified cost or pricing data in accordance with FAR 15.403 on future vehicle buys. The Acting Chief of Staff stated the target date for this action is July 20, 2007. The Acting Chief of Staff assumed the recommendation was applicable to the Buffalo Mine Protected Clearance Vehicle.

**Audit Response.** The recommendation was applicable to the Buffalo Mine Protected Clearance Vehicle, so we revised the recommendation accordingly. The comments are responsive, and no additional comments are required.

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## **B. Determination of Simula Aerospace and Defense Group, Inc., as a Responsible Contractor**

TACOM LCMC awarded a contract for crew protection kits (kits) to Simula, and Simula did not meet the FAR requirement as a responsible prospective contractor. Specifically, Simula did not have the necessary production control procedures, property control systems, and quality assurance measures in place to meet contract requirements for the kits. TACOM LCMC awarded the contract despite those problems because the contracting officer did not review and verify Simula's production capabilities and quality control processes before awarding the contract, nor did she determine contractor responsibility in accordance with FAR requirements. As a result, the Army received kits with missing and unusable components, thereby increasing kit installation time and requiring additional reinspection of kits in theater. In addition, the Army did not receive all of the kits in accordance with the contractual delivery schedule. Furthermore, the increased kit installation time, the additional reinspection of kits in theater, and the late deliveries increased risks to soldiers' lives.

### **Contractor Performance**

In February 2004, TACOM LCMC awarded a sole-source contract to Simula for kits for the HEMTT, PLS, HET, and the M915 truck series. TACOM LCMC purchased a total of 2,526 HEMTT kits; 1,250 PLS kits; 796 HET kits; 1,328 M915 kits; and other related accessories for a total award amount of \$265.9 million as of November 16, 2006. As of February 22, 2007, Simula delivered all items ordered on this contract; the contract remained open, however, pending several post-award audits the Defense Contract Audit Agency was conducting.

Simula did not meet the FAR requirement as a responsible prospective contractor, as evidenced by numerous corrective action requests (CARs) DCMA issued to Simula.

**FAR Requirements.** FAR 9.104-1(e) states that a responsible prospective contractor must have the necessary production control procedures, property control systems, and quality assurance measures, or the ability to obtain them, applicable to materials to be produced. FAR 9.103 states that contracts must be awarded only to responsible prospective contractors. FAR 9.105-1(c) states that to determine responsibility, the contracting officer should use verifiable knowledge of personnel within the contracting offices, audit offices, and contract administration offices. In addition, FAR 9.105-2(b) states that the contract file must include documents supporting a determination of responsibility.

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**Corrective Action Requests.** DCMA issued 64 CARs to Simula documenting discrepancies found in kits delivered to DCMA for inspection and acceptance. CARs have four levels of severity: Level I is a verbal CAR, Level II is a written CAR that requires a written response from the contractor, Level III is a written CAR describing systemic problems and requires a written response from the contractor, and Level IV is a CAR that initiates a complete shutdown of operations. DCMA issued 33 Level I CARs, 30 Level II CARs, and one Level III CAR to Simula from September 21, 2004, through December 28, 2005. Once Simula corrected a discrepancy, Simula presented the kit to DCMA for reinspection.

**Production Control Procedures.** Simula did not have adequate production control procedures to ensure that it met contract requirements for kits. According to DCMA personnel, Simula did not have a kit production line in place at the time of contract award capable of meeting contract requirements for kits. DCMA personnel stated that Simula employees reconfigured the production line multiple times after kit production began. In addition, DCMA issued 8 Level I CARs and 12 Level II CARs to Simula documenting production control problems. For example, DCMA issued a Level II CAR to Simula on September 27, 2004, identifying incorrect quantities of headlight brackets discovered in kits presented to the Government for inspection. In response to the CAR, Simula explained that the brackets contained the wrong bar code label because employees applied the bar code labels in a disorganized area, Simula had no instructions for the labeling process, and Simula used new and untrained personnel to apply the labels. In another example, on October 25, 2004, DCMA issued a Level II CAR to Simula citing kits containing an obsolete lighting bracket. In response to the CAR, Simula stated that its process to incorporate an engineering change proposal was not effective in controlling the rework process and employees did not properly purge inventory to eliminate all obsolete materials.

**Property Control Systems.** Simula did not have the necessary property control systems to ensure that it met contract requirements for kits. DCMA personnel stated that Simula's product receiving and inspection departments improperly managed vendor supplies and products used for kit production. DCMA issued three Level I CARs and five Level II CARs to Simula documenting property control problems. For example, on October 25, 2004, DCMA issued a Level II CAR to Simula identifying kits with the wrong quantity of parts. Simula's response to the CAR explained that Simula personnel opened numerous kits adjacent to each other at the same time, resulting in mixed parts between kits. In another example, DCMA issued a Level II CAR to Simula on July 6, 2005, stating that M915 kits contained nonconforming parts Simula had previously identified. Simula responded that the control of materials for the M915 program was extremely difficult due in part to the large quantity of parts and because Simula had no secured location to accommodate the rejected parts until Simula returned the parts to suppliers. This problem resulted in the mixture of conforming and nonconforming parts.

**Quality Assurance Measures.** Simula did not have sufficient quality assurance measures in place to ensure that it met contract requirements for kits. DCMA issued 19 Level I CARs, 8 Level II CARs, and 1 Level III CAR to Simula documenting quality assurance problems. For example, on September 28, 2004,

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DCMA issued a Level III CAR to Simula identifying nonconforming kit components and defects in the tooling used to inspect the kits. Simula responded that it had not adequately assessed the capabilities of kit vendors, and Simula did not maintain sufficient resources to effectively monitor and control kit vendors. Simula also stated that it lacked quality assurance verifications on the production line, receiving inspections for supplier-provided kit components, and first article inspections on kit components. According to DCMA personnel, Simula experienced quality control problems on programs other than the kit program.

Eight additional CARs addressed discrepancies in the paperwork presented with the kits and unspecified problems discovered at the Government's final inspection.

## **Determination of Contractor Capabilities**

The TACOM LCMC contracting officer did not review and verify Simula's production capabilities and quality control processes before awarding the contract, nor did she determine contractor responsibility in accordance with FAR requirements.

DCMA personnel stated that although DCMA had prior experience with Simula, TACOM LCMC did not contact DCMA before awarding the kit contract, nor did TACOM LCMC request DCMA to perform a pre-award survey. TACOM LCMC personnel stated that TACOM LCMC had procedures for determining a contractor's responsibility in accordance with FAR requirements, but contracting officials did not follow the procedures. The current contracting officer stated that she did not know why her predecessor did not follow proper procedures. The Justification and Approval for Other Than Full and Open Competition for the kit contract states:

[Project Manager Tactical Vehicles], Engineering and Logistics personnel have investigated other avenues to accomplish this action and have concluded that only [Simula] can meet the schedule for development [and] production of CPKs [Crew Protection Kits] for the whole range of affected vehicles in the time frame needed.

However, the Project Manager Tactical Vehicles could not provide documentation of any market research or investigation of Simula's production capabilities to support that statement. The contract file did not contain documentation supporting a determination of responsibility. Although TACOM LCMC awarded the kit contract sole source to Simula based on Simula's technical abilities, the contracting officer was still required to determine contractor responsibility.

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## Incomplete Kits and Late Deliveries

The Army received kits with missing and unusable parts, thereby increasing the kit installation time and requiring additional reinspection of kits in theater. In addition, the Army did not receive all of the kits in accordance with the contractual delivery schedule. Furthermore, the increased kit installation time, the additional reinspection of kits in theater, and the late deliveries increased risks to soldiers' lives.

**Adequacy of Kit Components.** Installation personnel inspected kits upon arrival to ensure that conforming kits were received in theater. Nonconforming and missing kit components were first reported in theater in early July 2004.

According to DCMA, the first 15 kits shipped to theater contained fastener subkits with missing components. In addition, in August 2004, kits arrived in theater with two left doors instead of one right and one left door, brush guards bent the wrong way, and cracked lower brush guards. In November 2004, installation personnel in theater discovered kits with missing thick cab side plates. Also in November 2004, installation personnel in theater discovered HEMTT kits with two right side brackets for holding the grill slants in the front of the truck instead of a left side and a right side bracket. Installation personnel had to cut the brackets apart and re-weld them to put them on trucks, unnecessarily increasing installation time and using extra resources. In December 2004, HEMTT and PLS kits arrived in Germany with several missing parts, prompting the contracting officer to write a letter to Simula requesting that Simula ship the missing parts immediately.

In January 2005, DCMA quality assurance representatives implemented a vehicle armor inspection plan in which every part number in each armor production line was 100 percent inspected every 30 days. We found no indication of missing or nonconforming armor parts in theater after DCMA implemented that plan.

**Delivery of Kits.** Simula failed to deliver approximately 34 percent of the kits in accordance with the contract delivery schedule. DCMA personnel indicated that when they rejected production lots due to quality problems, Simula would rework the kits and DCMA would have to accept the reworked kits late. TACOM LCMC quality assurance personnel had to suspend DCMA acceptance of kits several times due to quality problems with the kits. The following examples illustrate quality problems with kits.

- In June 2004, Aberdeen Test Center personnel identified leaking window seals on the kits. TACOM LCMC quality assurance personnel suspended kit acceptance in July 2004 until Simula resolved the issue.
- In August 2004, TACOM LCMC quality assurance personnel directed DCMA to stop shipment and acceptance of HEMTT kits, inspect all parts in process, and open all packaged kits at Simula to inspect for an unacceptable part because Simula was applying a part to the driver's side of the kit instead of the passenger's side. This problem affected 7 of the 29 kits in theater at that time.

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- In August 2005, DCMA discovered cracked parts in M915 kits, some of which Simula previously identified and painted over. TACOM LCMC quality assurance personnel directed DCMA to stop inspecting kits until Simula resolved this issue.

DCMA personnel stated that when installation personnel in theater discovered that the first batch of kits shipped from Simula lacked nuts, bolts, and other hardware, DCMA personnel went to Sierra Army Depot and Travis Air Force Base to reinspect kits at these locations. As compensation for the reinspection costs, DCMA negotiated with Simula for four HEMTT kits valued at approximately \$121,000. TACOM LCMC program personnel stated that TACOM LCMC did not pursue consideration from Simula for the late deliveries and nonconforming kits because the project manager felt that Simula was making an effort to improve the quality of the products toward the end of kit production.

## **Recommendations, Management Comments, and Audit Response**

### **B. We recommend that Commander, TACOM Life Cycle Management Command, Army Materiel Command, direct the Director, Acquisition Center to:**

- 1. Follow Federal Acquisition Regulation Subpart 9.1, “Responsible Prospective Contractors,” requirements to award future contracts to responsible contractors and properly document a determination of contractor responsibility.**

**Management Comments.** The Acting Chief of Staff, TACOM Life Cycle Management Command concurred, stating that Acquisition Center personnel will be reminded of the requirements in FAR Part 9 and the necessity to properly document determinations of contractor responsibility. The Acting Chief of Staff stated the target date for this action is July 20, 2007.

**Audit Response.** The comments are responsive, and no additional comments are required.

- 2. Negotiate for consideration from Simula for late deliveries of crew protection kits and missing and nonconforming components.**

**Management Comments.** The Acting Chief of Staff, TACOM Life Cycle Management Command concurred, stating that the Acquisition Center will conduct an assessment to determine the feasibility of negotiating consideration for late delivery. The Acting Chief of Staff stated the target date of completion of this action is June 30, 2007.

**Audit Response.** The comments are responsive, and no additional comments are required.

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## Appendix A. Scope and Methodology

We evaluated whether TACOM Life Cycle Management Command and Marine Corps Systems Command officials used appropriate contracting methods to award contracts to Force Protection, Inc., and Armor Holdings, Inc., subsidiaries, O’Gara Hess and Eisenhardt Armoring Company and Simula Aerospace and Defense Group, Inc., for armored vehicles and armor kits. We reviewed the DoD armored vehicle procurement history and the reasons why DoD awarded contracts for armored vehicles and armor kits to Force Protection, Inc., and Armor Holdings, Inc. We evaluated contractor performance on the contracts for armored vehicles and armor kits.

We collected, reviewed, and analyzed documents dated September 1993 through March 2007. Specifically, we reviewed acquisition documents for 10 contracts awarded to Force Protection, Inc.; 4 contracts awarded to O’Gara Hess and Eisenhardt Armoring Company; and 1 contract awarded to Simula Aerospace and Defense Group, Inc. We also evaluated letter contract authorizations, sole-source award justifications, price negotiation memorandums, and certified cost and pricing data, when applicable. We reviewed Defense Contract Management Agency (DCMA) product inspection reports and corrective action requests. We also reviewed Army Test and Evaluation Center safety confirmation reports for the Buffalo Mine Protected Clearance Vehicle, Cougar, High Mobility Multipurpose Wheeled Vehicle, and armor kits for the High Mobility Multipurpose Wheeled Vehicle and heavy tactical vehicles.

We interviewed contracting and program office personnel at TACOM Life Cycle Management Command and Communication and Electronics Command. We interviewed Marine Corps Systems Command contracting personnel including the lead contracting officer, procurement contracting officer, and contracting officers for Marine Corps contracts (contract M67854-04-D-5099, M67854-05-D-5091, M67854-06-D-5042, and M67854-05-C-5178). We also interviewed Marine Corps Systems Command program office personnel including the program manager for the Mine Resistant Ambush Protected program, team lead for Counter-Improvised Explosive Device Technology, and Director for Counter-Improvised Explosive Device Technology. We interviewed DCMA personnel including administrative contracting officers, industrial specialists, property specialists, and quality assurance representatives at DCMA-Atlanta, South Carolina Operations Team; DCMA-Dayton, Cincinnati Operations Team; and DCMA-Phoenix. We also interviewed test and evaluation personnel at the Army Test and Evaluation Center.

We reviewed applicable contracting regulations including the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, Public Law, and the United States Code.

We conducted this performance audit from May 2006 through May 2007 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that evidence obtained

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provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit scope was limited to contracts held directly between DoD and Force Protection, Inc., and between DoD and Armor Holdings, Inc., and its subsidiaries. We performed a cursory review of the Marine Corps contract (contract M67854-07-D-5006) with FPI awarded in November 2006 for 80 Buffalos and 200 JERRVs under the Mine Resistant Ambush Protected Program. The scope included all contracts in place at the time each subsidiary was acquired by Armor Holdings, Inc. This audit excluded Stewart and Stevenson, Inc., because the DoD Inspector General initiated a separate audit addressing Stewart and Stevenson, Inc., contracts for medium tactical vehicles.

**Use of Computer-Processed Data.** We did not use computer-processed data to perform this audit.

**Use of Technical Assistance.** We did not require technical assistance to perform this audit.

**Government Accountability Office High-Risk Area.** The Government Accountability Office has identified several high-risk areas in DoD. This report provides coverage of the DoD Contract Management high-risk area.

## Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the Department of Defense Inspector General (DoD IG) have issued four reports discussing armored vehicles. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

## GAO

GAO Report No. GAO-06-274, “Lack of a Synchronized Approach between the Marine Corps and Army Affected the Timely Production and Installation of Marine Corps Truck Armor,” June 2006

GAO Report No. GAO-06-160, “Several Factors Limited the Production and Installation of Army Truck Armor during Current Wartime Operations,” March 2006

GAO Report No. GAO-05-275, “Actions Needed to Improve the Availability of Critical Items during Current and Future Operations,” April 2005

## DoD IG

DoD IG Report No. D-2006-115, “Commercial Contracting for the Acquisition of Defense Systems,” September 29, 2006

## Appendix B. Congressional Request

COMMITTEE ON RULES

RANKING MEMBER

WASHINGTON OFFICE:  
2469 Rayburn Building  
WASHINGTON, D.C. 20515-3221  
(202) 225-3615



LOUISE M. SLAUGHTER  
CONGRESS OF THE UNITED STATES  
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WEBSITE: <http://www.louise.house.gov>

April 19, 2006

The Honorable Thomas F. Gimble  
Acting Inspector General  
U.S. Department of Defense  
400 Army Navy Drive  
Arlington, VA 22202-4704

Dear Inspector General Gimble,

I am writing to request that you review the Department of Defense's (DoD) procurement policies for body armor and armored vehicles.

As you know, an internal Pentagon memo -- first revealed by *The New York Times* in January -- found that 80 percent of marines killed in Iraq due to upper body wounds could have survived if they had extra body armor. This troubling news follows earlier revelations that our troops went into Iraq without enough bulletproof vests and armored vehicles necessary to safeguard their lives. It was not until our service men and women decided they had no choice but to purchase their own body armor that the DoD moved to equip our soldiers with the vital protection needed to fight a war. But despite armor upgrades, many soldiers remain unhappy with the quality of their body armor, and have continued to purchase equipment from private companies. Unfortunately, the Army recently barred service personnel from using non-DOD procured body armor. I am concerned that our soldiers in the field -- who think they need better protective gear than provided to them by DoD -- were not consulted before the Army banned privately-bought body armor.

In addition to DoD policies regarding body armor, I am concerned with the DoD's procurement history for armored vehicles. As with body armor, the DoD failed at the outset of the Iraq war to equip our troops with the armored vehicles needed to protect them from improvised explosive devices (IEDs). *The New York Times* has reported that DoD continues to rely on just one small company in Ohio, Armor Holdings, to produce the military's primary vehicle, the Humvee. Initiatives to speed up delivery of the new Humvees remain stalled, as the company is severely backlogged with orders. *The Times* also has reported that a small company in South Caroline, Force Protection, was given a contract in May 2005 for 122 armored vehicles, despite the fact that Force Protection has never mass-produced Humvees in the past. Predictably, the 122 armored vehicles have not all arrived in Iraq, and the vehicles that have continue to be plagued by mechanical failures.

In light of DoD's troubling pattern of misguided decisions regarding supplies for our troops, I respectfully request that you examine DoD's procurement history for body armor and armored vehicles, and determine whether or not proper policies were followed. I would like specific information on why DoD issued contracts to Armor Holdings and Force Protection. In addition, I

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The Honorable Thomas F. Gimble  
April 19, 2006  
Page # 2

request that your office determine the effect the Army's ban on privately bought body armor will have on the safety of our service men and women.

I appreciate your attention into this request and await your prompt response. Should you have any additional questions, please contact Alan Snyder of my staff at (202) 225-3615.

Sincerely,



Louise Slaughter  
Member of Congress

LMS:abs

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## **Appendix C. Report Distribution**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition, Technology, and Logistics  
Director, Defense Procurement and Acquisition Policy  
Under Secretary of Defense (Comptroller)/Chief Financial Officer  
Deputy Chief Financial Officer  
Deputy Comptroller (Program/Budget)  
Director, Program Analysis and Evaluation

### **Department of the Army**

Assistant Secretary of the Army (Financial Management and Comptroller)  
Auditor General, Department of the Army  
Commander, Army Materiel Command  
Commander, TACOM Life Cycle Management Command

### **Department of the Navy**

Commandant of the Marine Corps  
Commander, Marine Corps Systems Command  
Assistant Secretary of the Navy for Research, Development, and Acquisition  
Naval Inspector General  
Auditor General, Department of the Navy

### **Department of the Air Force**

Auditor General, Department of the Air Force

### **Combatant Command**

Commander, U.S. Joint Forces Command  
Inspector General, U.S. Joint Forces Command

### **Other Defense Organizations**

Director, Defense Contract Audit Agency  
Director, Defense Contract Management Agency

### **Non-Defense Federal Organization**

Office of Management and Budget

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## **Congressional Committees and Subcommittees, Chairman and Ranking Minority Member**

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Homeland Security and Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Oversight and Government Reform

House Subcommittee on Government Management, Organization, and Procurement,  
Committee on Oversight and Government Reform

House Subcommittee on National Security and Foreign Affairs,  
Committee on Oversight and Government Reform

The Honorable Louise M. Slaughter

# Department of the Army Comments



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TACOM LIFE CYCLE MANAGEMENT COMMAND  
6501 EAST 11 MILE ROAD  
WARREN, MICHIGAN 48397-5000

REPLY TO  
ATTENTION OF:

AMSTA-CS-CJ

7 June 2007

MEMORANDUM FOR Program Director, Acquisition and Contract Management, Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, Virginia 22202-4704

SUBJECT: DODIG Draft Report on Procurement Policy for Armored Vehicles (Project No. D2006-D000CK-0210.000)

1. Reference memorandum, Department of Defense Inspector General, 8 May 2007, subject as above.
2. We have reviewed DODIG Draft Report titled "Procurement Policy for Armored Vehicles, Project No. D2006-D000CK-0210.000". We are enclosing the TACOM Life Cycle Management Command (LCMC) position to the sections of the subject draft report pertaining to the Acquisition Center. Specifically, we concur with Findings A and B, and recommendations A.2.a., A.2.b., B.1, and B.2.
3. The TACOM LCMC Internal Review and Audit Compliance Office will track the status of the Acquisition Center's actions and perform a follow-up review to verify that the corrective actions have been completed.
4. Point of contact for this reply is Ms. Kristin Saleh, AMSTA-CS-CJ, Comm: 586-574-5741, DSN 786-5741 or email: kristin.saleh@us.army.mil.

Encl

*Wm W. Pickenheim*  
WM W. Pickenheim  
Chief of Staff, Acting

**TACOM Life Cycle Management Command (LCMC) Reply  
to Department of Defense Inspector General (DODIG) Draft Report,  
Procurement Policy for Armored Vehicles, Project No. D2006-D000CK-0210.000**

**Objective:** To review DOD procurement policies for armored vehicles. Specifically, DODIG reviewed the procurement history for armored vehicles contracts to FPI and AHI in support of the GWOT.

**DODIG Conclusions:**

**Finding A – Contracting Practices for Force Protection, Inc., Armored Vehicles**

TACOM Life Cycle Management Command (LCMC) did not adequately justify the commercial nature of commercial contracts with Force Protection, Inc., for the Buffalo Mine Protected Clearance Vehicle. TACOM LCMC decisions to award commercial contracts to Force Protection, Inc., may have limited their ability to ensure they paid fair and reasonable prices for the contracts.

**Finding B – Determination of Simula Aerospace and Defense Group, Inc., as a Responsible Contractor**

TACOM LCMC awarded a contract for crew protection kits to Simula Aerospace and Defense Group, Inc., an Armor Holdings, Inc., subsidiary. The subsidiary did not meet the Federal Acquisition Regulation definition of a responsible prospective contractor. As a result, TACOM LCMC received crew protection kits with missing and unusable components, which increased the kit installation time and required additional reinspection of kits. In addition, TACOM LCMC did not receive all of the crew protection kits in accordance with the contractual delivery schedule; and the increased crew protection kit installation time, the additional reinspection of kits in theater, and the late deliveries all resulted in increased risk to the lives of soldiers.

TACOM LCMC internal controls were not adequate. DODIG identified material internal control weaknesses in the award of contracts to Force Protection, Inc., and Armor Holdings, Inc., for armored vehicles and armor kits.

**Additional facts:**

Finding A - Use of commercial contract procedures, under FAR Part 12, allows the determination of price reasonableness based on facts other than certified cost and pricing data. The contracting officer can establish price reasonableness in accordance with FAR Parts 13.106-3, 14.408-2, or Subpart 15.4, as applicable. FAR Part 15.403-1 precludes the government from obtaining certified cost or pricing data when a commercial item is being procured. To support the determination of price reasonableness, the contractor's proposal was evaluated and resulting negotiations were based on a detailed cost analysis supported by a Defense Contract Audit Agency audit report on the contractor's proposal. Certified cost and pricing data provides the Government protection against defective pricing under the Truth in Negotiation Act.

**RECOMMENDATIONS**

**For the Commander, TACOM Life Cycle Management Command, Army Materiel Command, direct the Director, Acquisition Center to:**

**Recommendation A.2.a.:** Include and enforce a liquidated damages and late delivery fees clause on future contracts with Force Protection, Inc.

<p><b>Action Taken:</b> Concur. The Acquisition Center personnel will be informed to negotiate a liquidated damages/late delivery fee clause on future contracts with Force Protection, Inc. Target date for instructing acquisition personnel is 20 Jul 2007.</p> <p><b>Recommendation A.2.b.:</b> Procure future Mine Resistant Ambush Protected vehicles under FAR Part 15, "Contracting by Negotiation," with negotiated prices based on certified cost and pricing data.</p> <p><b>Action Taken:</b> Concur. The TACOM LCMC Acquisition Center does not currently have the contracting mission for the Mine Resistant Ambush Protected vehicles. The Center did procure Buffalo Mine Protected Clearance Vehicles. Assuming recommendation references the Buffalo Mine Protected Clearance vehicles, the Acquisition Center personnel will be informed to follow procedures outlined in FAR Part 15 and to obtain certified cost or pricing date in accordance with FAR Part 15.403 on future vehicle buys. Target date for instructing acquisition personnel is 20 Jul 2007.</p> <p><b>Recommendation B.1.:</b> Follow Federal Acquisition Regulation Subpart 9.1, "Responsible Prospective Contractors," requirements to award future contracts to responsible contractors and properly document a determination of contractor responsibility.</p> <p><b>Action Taken:</b> Concur. The Acquisition Center personnel will be reminded of the requirements in FAR Part 9 and the necessity to properly document determinations of contractor responsibility. Target date for instructing acquisition personnel is 20 Jul 2007.</p> <p><b>Recommendation B.2.:</b> Negotiate for consideration from Simula for late deliveries of crew protection kits and missing and nonconforming components.</p> <p><b>Action Taken:</b> Concur. The Acquisition Center will conduct an assessment to determine the feasibility of negotiating consideration for late delivery. Target date for completion of assessment is 30 Jun 2007.</p>	Revised
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# Department of the Navy Comments



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3000 MARINE CORPS PENTAGON  
WASHINGTON, DC 20380-3000

IN REPLY REFER TO:  
6CK-0210  
RFR-50  
7 June 07

From: COMMANDANT OF THE MARINE CORPS  
To: ASSISTANT INSPECTOR GENERAL FOR ACQUISITION AND  
CONTRACT MANAGEMENT, OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE

Subj: Department of Defense Inspector General Draft Report  
D-2006-D000CK-0210.000, "PROCUREMENT POLICY FOR ARMORED  
VEHICLES," dated 8 MAY 2007

Ref: (a) DODIG memo of 8 May 2007

Encl: (1) Marine Corps comments

1. In accordance with reference (a), the Marine Corps has  
reviewed the subject draft report and provides comments at the  
enclosure.

A handwritten signature in black ink, appearing to read "R. F. Kassel".

R. F. KASSEL  
By Direction

Subj: Department of Defense Inspector General Draft Report  
D-2006-D000CK-0210.000, "PROCUREMENT POLICY FOR ARMORED  
VEHICLES," dated 8 MAY 2007

1. The Marine Corps has reviewed the draft report and the following comments are provided:

As stated in the 28 March 2007 letter from the Executive Director of the Marine Corps Systems Command to the Deputy Inspector General for Auditing, the armor vehicle procurements were executed within the law, spirit and intent of the current acquisition rules and regulations for the procurement of supplies and services in other than full and open competition environments.

The DODIG concluded that Marine Corps Systems Command (MCSC) contracting officials awarded the sole-source award to Force Protection, Inc. (FPI) based on adequate market research, documented survivability performance characteristics, the contractor's ability to meet urgent delivery requirements, and unusual and compelling requirements. While the DODIG identified material internal control weaknesses in the award of contracts to FPI for armored vehicles and armor kits, it nevertheless found that the Cougar and JERRV vehicles have significant and operational value to our warfighters in the field, noting that information from users on vehicle performance indicated that the vehicles performed well and saved lives.

The DODIG conclusion that "MCSC contracting officials did not follow the Federal Acquisition Regulation (FAR) when issuing commercial contracts to FPI for the Buffalo and the Cougar" is inaccurate. MCSC contracting officials did, in fact, follow the FAR procedures on market research; however, MCSC acknowledges that written documentation was not completed and all market research responses could not be located. Additionally, the DODIG's opinion that these vehicles aren't commercial is not supported by the fact that these vehicles were and are offered for use by Non-Government Organizations (NGO) for the clearing of Explosive Ordnance Disposal (EOD). This would qualify the vehicle as a commercial product because an NGO is not inherently governmental. However, in 2005 MCSC began contracting for these vehicles using FAR Part 15 procedures in lieu of FAR Part 12 commercial procedures.

The DODIG conclusion that sole source contracting was improper because "MCSC officials knew other sources were available" does not recognize the fact that MCSC properly followed the FAR by getting authorization for sole source procurement via a Justification & Approval from the Assistant Secretary of the Navy (ASN), Research, Development and Acquisition (RD&A), particularly those citing the authority of FAR 6.302-2 or Public Law 107-314, Section 806.

Subj: Department of Defense Inspector General Draft Report  
D-2006-D000CK-0210.000, "PROCUREMENT POLICY FOR ARMORED  
VEHICLES," dated 8 MAY 2007

The DODIG conclusion that going commercial on the two contracts with FPI may have limited the Government's ability to ensure it paid a fair and reasonable price creates an inaccurate impression. Each contract's prices were properly determined to be fair and reasonable. In addition, by using FAR part 15 procedures and conducting a competitive acquisition, we have clearly demonstrated that MCSC in fact paid fair and reasonable prices for these vehicles.

The DODIG took exception to MCSC modifying the delivery schedule on the undefinitized JERRV contract. Not only is this a legal and acceptable practice, it was not unexpected given the urgent nature of the action and the fact that MCSC was trying to procure and field a complex, new vehicle system without the benefit of a lengthy and costly development phase.

Recommendation A.1. Recommend that the Commander, Marine Corps Systems Command direct the Assistant Commander for Contracts to:

- a. Continue to calculate and assess any additional liquidated damages for late delivery of vehicles on contract M67854-05-D-5091.

Marine Corps Response: The Marine Corps concurs with the recommendation. The subject contract will soon be ready for closeout. Prior to closeout, MCSC will determine if it is in the best interest of the Government to assess liquidated damages or seek other appropriate consideration for previous late deliveries.

- b. Compete future contracts for the Joint Explosive Ordnance Disposal Rapid Response Vehicles.

Marine Corps Response: The Marine Corps concurs with the recommendation. In fact, MCSC took the recommended action when it competitively awarded nine (9) Mine Resistant Ambush Protected (MRAP) vehicle contracts in January 2007.

- c. Include and enforce a liquidated damages and late delivery fees clause on future contracts with Force Protection, Inc.

Marine Corps Response: The Marine Corps concurs with the recommendation. MCSC will consider incorporating a liquidated damages clause into future contracts with FPI as it does with all contracts. However, upon awarding of the MRAP contract in

Subj: Department of Defense Inspector General Draft Report  
D-2006-D000CK-0210.000, "PROCUREMENT POLICY FOR ARMORED  
VEHICLES," dated 8 MAY 2007

January 2007, FPI has four (4) production lines operating and is producing vehicles at or exceeding the requirements of the contract. At this time FPI appears to have determined a working solution to produce vehicles at an accelerated rate.

- d. Procure future Mine Resistant Ambush Protected vehicles under FAR Part 15, "Contracting by Negotiation," with negotiated prices based on certified cost and pricing data.

Marine Corps Response: The Marine Corps concurs with this recommendation. Beginning with the 2005 contract, MCSC shifted from commercial contracting to use of FAR Part 15 procedures. Competitive FAR Part 15 procedures were used in making the January 2007 competitive MRAP vehicle contract awards. Certified cost and pricing data were not required as adequate market price competition was available.

## **Team Members**

The Department of Defense Office of the Deputy Inspector General for Auditing, Acquisition and Contract Management prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

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# Inspector General Department *of* Defense

